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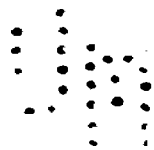


# INTERSTATE COMMERCE COMMISSION REPORTS

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## VOLUME 47

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u. s.  
DECISIONS OF THE  
INTERSTATE COMMERCE COMMISSION  
OF THE UNITED STATES

OCTOBER, 1917, TO DECEMBER, 1917

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REPORTED BY THE COMMISSION

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WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1918

**INTERSTATE COMMERCE COMMISSION.**

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**EDGAR E. CLARK.**

**WINTHROP M. DANIELS.**

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## CONTENTS.

---

	Page.
Members of the Commission.....	ii
Table of cases reported.....	v
Table of cases cited.....	xv
Opinions of the Commission.....	1
Cases disposed of without printed report, with table.....	765
Supplemental reparation orders.....	771
Informal reparation claims.....	773
Table of commodities.....	775
Table of localities.....	781
Index Digest.....	793
47 I. C. .	iii

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## TABLE OF CASES REPORTED.

---

[NOTE.—“Et al.” in parentheses indicates other complainants or defendants, as in subnumbers or other cases, reported in same opinion.]

	Page.
<b>Aberdeen &amp; Rockfish R. R. Co., National Society of Record Assos. v.....</b>	335
<b>Absorption of Switching at Milwaukee.....</b>	41
<b>Absorption of Switching Charges.....</b>	583
<b>Acme Cement Plaster Co. v. A., C. &amp; Y. Ry. Co.....</b>	1
<b>Acme Steel Goods Co. v. A., T. &amp; S. F. Ry. Co.....</b>	18
<b>Advance Lumber Co. v. S. Ry. Co.....</b>	237
<b>Akron, Canton &amp; Youngstown Ry. Co., Acme Cement Plaster Co. v.....</b>	1
<b>Alabama &amp; Vicksburg Ry. Co.:</b>	
Fidelity Cotton Oil Co. v.....	542
Lafayette Chamber of Commerce v.....	246
<b>Alabama Great Southern R. R. Co.:</b>	
Nebraska Bridge Supply & Lumber Co. v.....	39
Tuscaloosa Board of Trade v.....	483
<b>Alabama Packing Co. v. L. &amp; N. R. R. Co.....</b>	524
<b>Alabama, Tennessee &amp; Northern Ry., Kath Co. (Inc.) v.....</b>	42
<b>Alexander Bros. Lumber Co. v. P. M. R. R. Co.....</b>	69
<b>Alexandria &amp; Western Ry. Co., Traffic Bureau of the Sioux City Commercial Club v.....</b>	347
<b>American Bridge Co. v. N. &amp; W. Ry. Co.....</b>	235
<b>American Cement Plaster Co. v. M. C. R. R. Co.....</b>	1
<b>American Sumatra Tobacco Co. v. N. Y., N. H. &amp; H. R. R. Co.....</b>	243
<b>Ann Arbor R. R. Co.:</b>	
Arkansas Rice Shippers' Traffic Bureau v.....	566
Cadillac Chamber of Commerce (et al.) v.....	409
<b>Arkansas Rice Shippers' Traffic Bureau v. A. A. R. R. Co.....</b>	566
<b>Atchison, Topeka &amp; Santa Fe Ry. Co.:</b>	
Acme Steel Goods Co. v.....	18
Barrett Mfg. Co. v.....	27
New Era Milling Co. v.....	67
Ramsey & Co. v.....	64

	Page.
Atlantic City R. R. Co., Continental Can Co. <i>v</i> .....	82
Baltimore & Ohio R. R. Co.:	
Committee on Ways and Means to Prosecute the Case of Alleged Railroad Rate and Service Discrimination at the Port of New York <i>v</i> .....	643
Galion Iron Works & Mfg. Co. <i>v</i> .....	136
Grand Rapids Asso. of Commerce <i>v</i> .....	409
Temco Electric Motor Co. <i>v</i> .....	76
Baltimore & Ohio Southwestern R. R. Co.:	
Perdue <i>v</i> .....	210
Schall Co. <i>v</i> .....	254
Barrett Mfg. Co. <i>v</i> . A., T. & S. F. Ry. Co.....	27
Beall & Co. <i>v</i> . O.-W. R. R. & N. Co.....	474
Big Fork & International Falls Ry. Co., Minnesota & Ontario Power Co. <i>v</i> .....	208
Blatchford Calf Meal Factory <i>v</i> . E., J. & E. Ry. Co.....	10
Board of Trade of Tuscaloosa, Ala., <i>v</i> . A. G. S. R. R. Co.....	483
Boston & Albany R. R. Co., National Utilization Corp. <i>v</i> .....	467
Boston & Maine R. R.:	
Emery & Co. <i>v</i> .....	200
Wallace-Smith & Co. <i>v</i> .....	62
Business Men's Asso. of Petoskey, Mich., <i>v</i> . A. A. R. R. Co.....	409
Butler County R. R. Co., McFarland Lumber Co. <i>v</i> .....	471
Cadillac Chamber of Commerce <i>v</i> . A. A. R. R. Co.....	409
California Fruit Exchange <i>v</i> . S. P. Co.....	372
California Pine Box & Lumber Co. <i>v</i> . S. P. Co.....	372
Campbell & Cleaver <i>v</i> . St. L. & S. F. R. R. Co.....	8
Canned Goods from San Francisco, Cal.....	285
Cape Girardeau Portland Cement Co. <i>v</i> . St. L. & S. F. R. R. Co.....	204
Cement to Nebraska (No. 2).....	160
Chamber of Commerce of—	
Cadillac, Mich., <i>v</i> . A. A. R. R. Co.....	409
Jackson, Mich., <i>v</i> . M. C. R. R. Co.....	409
Lafayette, La., <i>v</i> . A. & V. Ry. Co.....	246
Lansing, Mich., <i>v</i> . A. A. R. R. Co.....	409
Marshall, Mich., <i>v</i> . M. C. R. R. Co.....	409
Syracuse, N. Y., <i>v</i> . M. C. R. R. Co.....	14
Charleston & Norfolk S. S. Co.....	365
Charleston & Norfolk S. S. Co. <i>v</i> . C. & O. Ry. Co.....	365
Chesapeake & Ohio Ry. Co., Charleston & Norfolk S. S. Co. <i>v</i> ..	365
Chicago & Eastern Illinois R. R. Co., Matthews & Bro. <i>v</i> .....	36

<b>Chicago &amp; North Western Ry. Co.:</b>	<b>Page.</b>
Cudahy Bros. Co. <i>v.</i> .....	380
Curtis & Yale Co. <i>v.</i> .....	12
Mitchell, Lewis & Staver Co. <i>v.</i> .....	71
Weisse & Co. <i>v.</i> .....	16
<b>Chicago, Burlington &amp; Quincy R. R. Co.:</b>	
Dimmitt-Caudle-Smith Live Stock Commission Co. <i>v.</i> ....	287
National Live Stock Exchange <i>v.</i> .....	380
<b>Chicago Great Western R. R. Co., Minneapolis Traffic Asso. <i>v.</i> ..</b>	<b>583</b>
<b>Chicago, Milwaukee &amp; St. Paul Ry. Co.:</b>	
Dewey <i>v.</i> .....	32
Farmers' Elevator Co. (et al.) <i>v.</i> .....	475
Gund Brewing Co. <i>v.</i> .....	233
Northwestern Traffic & Service Bureau <i>v.</i> .....	549
Van Dusen Harrington Co. <i>v.</i> .....	59
<b>Chicago, St. Paul, Minneapolis &amp; Omaha Ry. Co., Sioux City</b>	
Live Stock Exchange <i>v.</i> .....	279
<b>Cincinnati, Hamilton &amp; Dayton Ry. Co.:</b>	
Practical Drawing Co. <i>v.</i> .....	227
Prest-O-Lite Co. (Inc.) <i>v.</i> .....	22
<b>Cincinnati, New Orleans &amp; Texas Pacific Ry. Co., Kindred <i>v.</i> ..</b>	<b>73</b>
<b>Classification of Live Stock</b> .....	<b>335</b>
<b>Cleveland, Cincinnati, Chicago &amp; St. Louis Ry. Co., Procter &amp;</b>	
Gamble Co. <i>v.</i> .....	231
<b>Coal to South Dakota</b> .....	<b>750</b>
<b>Colorado &amp; Southern Ry. Co., Lincoln Commercial Club <i>v.</i> ....</b>	<b>557</b>
<b>Commerce Asso. of Grand Rapids <i>v.</i> B. &amp; O. R. R. Co. ....</b>	<b>409</b>
<b>Commercial Club of—</b>	
Lincoln, Nebr., <i>v.</i> C. & S. Ry. Co. ....	557
Sioux City Traffic Bureau <i>v.</i> A. & W. Ry. Co. ....	347
<b>Committee on Ways and Means to Prosecute the Case of</b>	
<b>Alleged Railroad Rate and Service Discrimination at the</b>	
<b>Port of New York <i>v.</i> B. &amp; O. R. R. Co. ....</b>	<b>643</b>
<b>Congress, Special Report to, of the Commission</b> .....	<b>757</b>
<b>Conquest &amp; Son <i>v.</i> S. A. L. Ry. ....</b>	<b>517</b>
<b>Continental Can Co. <i>v.</i> A. C. R. R. Co. ....</b>	<b>82</b>
<b>Coulbourn <i>v.</i> N. Y., P. &amp; N. R. R. Co. ....</b>	<b>54</b>
<b>Creamery Package Mfg. Co. <i>v.</i> K. C. S. Ry. Co. ....</b>	<b>84</b>
<b>Crown Willamette Paper Co. <i>v.</i> S. P. Co. ....</b>	<b>44</b>
<b>Cudahy Bros. Co. <i>v.</i> C. &amp; N. W. Ry. Co. ....</b>	<b>380</b>
<b>Curtis &amp; Yale Co. <i>v.</i> C. &amp; N. W. Ry. Co. ....</b>	<b>12</b>
<b>Cutler-Magner Co. <i>v.</i> M., St. P. &amp; S. S. M. Ry. Co. ....</b>	<b>249</b>
<b>Delaware, Lackawanna &amp; Western R. R. Co., Hyatt Roller</b>	
Bearing Co. <i>v.</i> .....	91
<b>47 L. C. C.</b>	

	Page.
Dewey v. C., M. & St. P. Ry. Co.....	32
Dimmitt-Caudle-Smith Live Stock Commission Co. v. C., B. & Q. R. R. Co.....	287
Du Pont de Nemours Powder Co. v.:	
H. & B. V. R. R. Co.....	221
P. R. R. Co.....	224
Eagle Pass Lumber Co. v. G., H. & S. A. Ry. Co.....	219
Elgin, Joliet & Eastern Ry. Co., Blatchford Calf Meal Fac- tory v.....	10
Emery & Co. v. B. & M. R. R.....	200
Ewauna Box Co. v. S. P. Co.....	372
Export Freight Free Time.....	162
Farmers Elevator & Mercantile Co. v. M. P. Ry. Co.....	25
Farmers' Elevator Co. v. C., M. & St. P. Ry. Co.....	475
Farmers' Grain Co. v. C., M. & St. P. Ry. Co.....	475
Fidelity Cotton Oil Co. v. A. & V. Ry. Co.....	542
Fifteenth Section Application No. 101.....	160
Flanley Grain Co. v. G. N. Ry. Co.....	74
Florida East Coast Ry. Co., Memphis Merchants Exchange v.	251
Fourth Section Applications:	
Nos. 349, 703, 1296, 1530, 1548, and 2045.....	44
Nos. 458 et al.....	566
Nos. 465, 799, 2659, 4218, 4219, and 4220.....	355
Nos. 607, 1481, 1561, 1563, 1572, 1625, 1771, 1787, 2060, 3596, 3799, 4286, 4460, and 4966.....	409
Nos. 703 and 1573.....	517
Nos. 703, 928, 1074, 1548, 1561, 1573, and 4578.....	54
No. 827.....	263
No. 1065.....	508
No. 1548.....	237
Nos. 1952 and 2138.....	524
No. 2138.....	42
No. 3786.....	16
No. 4220.....	25
Nos. 4966 and 10483.....	576
No. 11051.....	109
Free Time on Export Freight.....	162
Free Time on Hold Freight.....	141
Galion Iron Works & Mfg. Co. v. B. & O. R. R. Co.....	136
Galveston, Harrisburg & San Antonio Ry. Co., Eagle Pass Lumber Co. v.....	219
Gould v. G. N. Ry. Co.....	581
Grain Transit at Michigan Stations.....	104
Grand Rapids Asso. of Commerce v. B. & O. R. R. Co.....	409

# TABLE OF CASES REPORTED.

IX

	Page.
Grand Trunk Western Ry. Co., Price Iron & Steel Co. v. ....	215
Gray Lumber Co. v. M. & O. R. R. Co. ....	20
Great Northern Ry. Co.:	
Flanley Grain Co. v. ....	74
McCaull-Dinsmore Co. (et al.) v. ....	581
Omaha Grain Exchange v. ....	532
Royal Milling Co. v. ....	263
Great Western Lumber Co. v. S. P. Co. ....	372
Greenfield & Co. v. P. R. R. Co. ....	403
Gulf & Ship Island R. R. Co., Wausau Southern Lumber Co. v. ..	507
Gund Brewing Co. v. C., M. & St. P. Ry. Co. ....	233
Handling of Heavy Articles. ....	323
Harmon & Co. v. N. Y. C. R. R. Co. ....	277
Harrison v. M. C. R. R. Co. ....	259
Hold Freight Free Time. ....	141
Houston & Brazos Valley R. R. Co., Du Pont de Nemours Powder Co. v. ....	221
Hyatt Roller Bearing Co. v. D., L. & W. R. R. Co. ....	91
In re:	
Charleston & Norfolk Steamship Co. ....	365
Coal to South Dakota. ....	750
Michigan Percentage Cases. ....	409
New York Harbor Case. ....	643
Rates between C. F. A. Territory and Points on the C. & O. Ry., Lexington District. ....	576
Rates on Coal, Carloads, from Points in Wyoming and Montana to Points in South Dakota. ....	750
Unification of Railroad Operation. ....	757
In re Advances:	
Canned Goods from San Francisco, Cal. ....	285
Cement to Nebraska (No. 2) ....	160
Export Freight Free Time. ....	162
Grain Transit at Michigan Stations. ....	104
Handling of Heavy Articles. ....	323
Hold Freight Free Time. ....	141
Live Stock Classification. ....	335
Lumber to Sioux City, Iowa. ....	540
Milwaukee Switching Absorption. ....	41
New York Harbor Storage. ....	141
Official Classification No. 44. ....	91
Reconsignment Case. ....	590
Switching Absorptions. ....	583
Twin Cities Switching. ....	583



**In re Advances—Continued.**

	<b>Page.</b>
Western Trunk Lines Iron and Steel .....	109
Western Trunk Lines Iron and Steel (No. 2) .....	109
Iron and Steel in Western Trunk Line Territory .....	109
Jackson Chamber of Commerce v. M. C. R. R. Co .....	409
Kansas Buff Brick & Mfg. Co. v. M., K. & T. Ry. Co .....	217
Kansas City Southern Ry. Co., Creamery Package Mfg. Co. v..	84
Kath Co. (Inc.) v. A., T. & N. Ry .....	42
Kerr Bleaching & Finishing Works v. O. D. S. S. Co .....	472
Kindred v. C., N. O. & T. P. Ry. Co .....	73
Kruger Lumber Co. v. St. L. & S. F. R. R. Co .....	52
Lafayette Chamber of Commerce v. A. & V. Ry. Co .....	246
Lansing Chamber of Commerce v. A. A. R. R. Co .....	409
Lewis Co. v. L. & B. R. R. R. Co .....	79
Lincoln Commercial Club v. C. & S. Ry. Co .....	557
Live Stock Classification .....	335
Louisville & Nashville R. R. Co.:	
Alabama Packing Co. (et al.) v .....	524
Rapier Sugar Feed Co. v .....	222
Stonega Coke & Coal Co. (Inc.) v .....	282
Louisville, Henderson & St. Louis Ry. Co., Stimson v .....	508
Lowville & Beaver River R. R. Co., Lewis Co. v .....	79
Lumber to Sioux City, Iowa .....	540
McCaull-Dinsmore Co. v. G. N. Ry. Co .....	581
McFarland Lumber Co. v.:	
B. C. R. R. Co .....	471
St. L. S. W. Ry. Co .....	225
Manufacturers' Asso. of Michigan v. A. A. R. R. Co .....	409
Marshall Chamber of Commerce v. M. C. R. R. Co .....	409
Matthews & Bro. v. C. & E. I. R. R. Co .....	36
Memphis Merchants Exchange v. F. E. C. Ry. Co .....	251
Merchants Exchange of Memphis v. F. E. C. Ry. Co .....	251
Michigan Central R. R. Co.:	
American Cement Plaster Co. v .....	1
Jackson Chamber of Commerce (et al.) v .....	409
Syracuse Chamber of Commerce, for Syracuse Ornamen-	
tal Co., v .....	14
Michigan Mfrs. Asso. v. A. A. R. R. Co .....	409
Michigan Percentage Cases .....	409
Milwaukee Switching Absorption .....	41
Minneapolis, St. Paul & Sault Ste. Marie Ry. Co., Cutler-	
Magner Co. v .....	249
Minneapolis Traffic Asso. v. C. G. W. R. R. Co .....	583
Minnesota & Ontario Power Co. v. B. F. & I. F. Ry. Co .....	208

# TABLE OF CASES REPORTED.

**XI**

	<b>Page.</b>
Mississippi Central R. R. Co., Harrison v .....	259
Missouri, Kansas & Texas Ry. Co.:	
Kansas Buff Brick & Mfg. Co. v .....	217
National Petroleum Asso. v .....	355
Standard Roofing Co. v .....	212
Missouri Pacific Ry. Co., Farmers Elevator & Mercantile Co. v.	25
Mitchell, Lewis & Staver Co. v. C. & N. W. Ry. Co .....	71
Mobile & Ohio R. R. Co., Gray Lumber Co. v .....	20
Muskogee Produce Co. v. St. L. & S. F. R. R. Co .....	239
Nashville, Chattanooga & St. Louis Ry., Nebraska Bridge Supply & Lumber Co. v .....	39
National Live Stock Exchange v. C., B. & Q. R. R. Co .....	380
National Petroleum Asso. v. M., K. & T. Ry. Co .....	355
National Society of Record Assos. v. A. & R. R. R. Co .....	335
National Utilization Corp. v. B. & A. R. R. Co .....	467
Nebraska Bridge Supply & Lumber Co. v. N., C. & St. L. Ry. (et al.) .....	39
New Era Milling Co. v. A., T. & S. F. Ry. Co .....	67
New Orleans & Northeastern R. R. Co., Newman Lumber Co. v.	33
New York Central R. R. Co., Harmon & Co. v .....	277
New York Harbor Case .....	643
New York Harbor Storage .....	141
New York, New Haven & Hartford R. R. Co.:	
American Sumatra Tobacco Co. v .....	243
Trexler Lumber Co. v .....	229
New York, Philadelphia & Norfolk R. R. Co., Coulbourn v...	54
Newman Lumber Co. v. N. O. & N. E. R. R. Co .....	33
Norfolk & Western Ry. Co.:	
American Bridge Co. v .....	235
North Carolina Pine Asso. (Inc.) v .....	460
North Carolina Pine Asso. (Inc.) v. N. & W. Ry. Co .....	460
Northern Pacific Ry. Co., Pacific Coast Shippers Asso. v .....	57
Northwestern Traffic & Service Bureau (Inc.) v. C., M. & St. P. Ry. Co .....	549
Official Classification No. 44 .....	91
Old Dominion S. S. Co., Kerr Bleaching & Finishing Works v.	472
Omaha Grain Exchange v. G. N. Ry. Co .....	532
Oregon-Washington R. R. & N. Co., Beall & Co. v .....	474
Pacific Coast Shippers Asso. v. N. P. Ry. Co .....	57
Pennsylvania Co., Stewart Iron Co. (Ltd.) v .....	512
Pennsylvania R. R. Co.:	
Du Pont de Nemours Powder Co. v .....	224
Greenfield & Co. v .....	403
Perdue v. B. & O. S. W. R. R. Co .....	210

	<b>Page.</b>
Pere Marquette R. R. Co., Alexander Bros. Lumber Co. <i>v.</i> . . . .	69
Peshtigo Lumber Co. <i>v.</i> W. N. W. Ry. . . . .	6
Petoskey Business Men's Asso. <i>v.</i> A. A. R. R. Co. . . . .	409
Practical Drawing Co. <i>v.</i> C., H. & D. Ry. Co. . . . .	227
Prest-O-Lite Co. (Inc). <i>v.</i> C., H. & D. Ry. Co. . . . .	22
Price Iron & Steel Co. <i>v.</i> G. T. W. Ry. Co. . . . .	215
Procter & Gamble Co. <i>v.</i> C., C., C. & St. L. Ry. Co. . . . .	231
Ramsey & Co. <i>v.</i> A., T. & S. F. Ry. Co. . . . .	64
Rapier Sugar Feed Co. <i>v.</i> L. & N. R. R. Co. . . . .	222
Rates between C. F. A. Territory and Points on the C. & O. Ry., Lexington District. . . . .	576
Rates on Coal, Carloads, from Points in Wyoming and Mon- tana to Points in South Dakota. . . . .	750
Reconsignment Case. . . . .	590
Report to Congress, Special, of the Commission. . . . .	757
Royal Milling Co. <i>v.</i> G. N. Ry. Co. . . . .	263
St. Louis & San Francisco R. R. Co.:	
Campbell & Cleaver <i>v.</i> . . . .	8
Cape Girardeau Portland Cement Co. <i>v.</i> . . . .	204
Kruger Lumber Co. <i>v.</i> . . . .	52
Muskogee Produce Co. <i>v.</i> . . . .	239
St. Louis Southwestern Ry. Co., McFarland Lumber Co. <i>v.</i> . . .	225
Schall Co. <i>v.</i> B. & O. S. W. R. R. Co. . . . .	254
Seaboard Air Line Ry., Conquest & Son <i>v.</i> . . . .	517
Sioux City Commercial Club Traffic Bureau <i>v.</i> A. & W. Ry. Co. .	347
Sioux City Live Stock Exchange <i>v.</i> C., St. P., M. & O. Ry. Co. .	279
Southern Can Co. <i>v.</i> S. Ry. Co. . . . .	85
Southern Lumber & Mfg. Co. <i>v.</i> T. Ry. Co. . . . .	87
Southern Pacific Co.:	
California Pine Box & Lumber Co. (et al.) <i>v.</i> . . . .	372
Crown Willamette Paper Co. <i>v.</i> . . . .	44
Southern Ry. Co.:	
Advance Lumber Co. <i>v.</i> . . . .	237
Southern Can Co. <i>v.</i> . . . .	85
Special Report of the Commission to Congress. . . . .	757
Standard Roofing Co. <i>v.</i> M., K. & T. Ry. Co. . . . .	212
Steagall & Lightfoot <i>v.</i> L. & N. R. R. Co. . . . .	524
Stewart Iron Co. (Ltd.) <i>v.</i> P. Co. . . . .	512
Stimson <i>v.</i> L., H. & St. L. Ry. Co. . . . .	508
Stonega Coke & Coal Co. (Inc.) <i>v.</i> L. & N. R. R. Co. . . . .	282
Storage at New York Harbor. . . . .	141
Swift & Co. <i>v.</i> U. P. R. R. Co. . . . .	49
Switching Absorption at Milwaukee. . . . .	41
Switching Absorptions . . . . .	583

	Page.
Switching at Twin Cities.....	583
Syracuse Chamber of Commerce, for Syracuse Ornamental Co., v. M. C. R. R. Co.....	14
Syracuse Ornamental Co. v. M. C. R. R. Co.....	14
Temco Electric Motor Co. v. B. & O. R. R. Co.....	76
Tennessee Ry. Co., Southern Lumber & Mfg. Co. v. ....	87
Traffic Asso. of Minneapolis v. C. G. W. R. R. Co.....	583
Traffic Bureau of—	
Arkansas Rice Shippers v. A. A. R. R. Co.....	566
Sioux City Commercial Club v. A. & W. Ry. Co.....	347
Transit on Grain at Michigan Stations.....	104
Trexler Lumber Co. v. N. Y., N. H. & H. R. R. Co.....	229
Tuscaloosa Board of Trade v. A. G. S. R. R. Co.....	483
Twin Cities Switching.....	583
Unification of Railroad Operation.....	757
Union Pacific R. R. Co.:	
Swift & Co. v. ....	49
White v. ....	261
Van Dusen Harrington Co. v. C., M. & St. P. Ry. Co.....	59
Wallace-Smith & Co. v. B. & M. R. R.....	62
Wausau Southern Lumber Co. v. G. & S. I. R. R. Co.....	507
Weisse & Co. v. C. & N. W. Ry. Co.....	16
Western Trunk Lines Iron and Steel.....	109
Western Trunk Lines Iron and Steel (No. 2).....	109
White v. U. P. R. R. Co.....	261
Wisconsin Northwestern Ry., Peshtigo Lumber Co. v. ....	6



## TABLE OF CASES CITED.

---

	Page.
<b>Atchison, T. &amp; S. F. Ry. Co. v. Kansas City Stock Yards Co.</b> (33 I. C. C., 92).....	318
<b>Atlanta Freight Bureau v. N., C. &amp; St. L. Ry.</b> (29 I. C. C., 476).....	498, 527
<b>Baltimore Chamber of Commerce v. B. &amp; O. R. R. Co.</b> (22 I. C. C., 596).....	274
<b>Beall &amp; Co. v. O.-W. R. R. &amp; N. Co.</b> (41 I. C. C., 627).....	474
<b>Becker v. P. M. R. R. Co.</b> (28 I. C. C., 645).....	613, 631
<b>Beekman Lumber Co. v. K. C. S. Ry. Co.</b> (17 I. C. C., 86)....	613
<b>Brey v. P. R. R. Co.</b> (16 I. C. C., 497).....	156
<b>Briggs &amp; Turivas v. I. H. B. R. R. Co.</b> (U. R. A-139).....	216
<b>Buffalo Union Furnace Co. v.:</b>	
<b>L. S. &amp; M. S. Ry. Co.</b> (21 I. C. C., 620).....	514
<b>L. S. &amp; M. S. Ry. Co.</b> (44 I. C. C., 267).....	514
<b>Bulley &amp; Son v. St. L. &amp; S. F. R. R. Co.</b> (45 I. C. C., 171) ...	9
<b>Cape Girardeau Portland Cement Co. v. St. L. &amp; S. F. R. R.</b> <b>Co.</b> (35 I. C. C., 109).....	204
<b>Car Supply Investigation</b> (42 I. C. C., 657).....	761
<b>Cardiff Coal Co. v. C., M. &amp; St. P. Ry. Co.</b> (13 I. C. C., 460) ..	754
<b>Cattle Raisers Asso. of Texas v. M., K. &amp; T. Ry. Co.</b> (11 I. C. C., 296).....	310
<b>Celina Mill &amp; Elevator Co. v. St. L. S. W. Ry. Co.</b> (15 I. C. C., 138).....	107
<b>Central Commercial Co. v.:</b>	
<b>L. &amp; N. R. R. Co.</b> (27 I. C. C., 114).....	260, 613
<b>L. &amp; N. R. R. Co.</b> (33 I. C. C., 164).....	260
<b>Chamber of Commerce of—</b>	
<b>Milwaukee v. C., R. I. &amp; P. Ry. Co.</b> (15 I. C. C., 460)....	754
<b>New York v. N. Y. C. &amp; H. R. R. R. Co.</b> (24 I. C. C., 55).....	452, 683
<b>Newport News v. S. Ry. Co.</b> (23 I. C. C., 345).....	736
<b>Charleston &amp; Norfolk S. S. Co. v. C. &amp; O. Ry. Co.</b> (40 I. C. C., 382).....	365
<b>Chicago Lumber &amp; Coal Co. v. T. S. Ry. Co.</b> (16 I. C. C., 323) 47 I. C. C.	713

City of—	Page.
Astoria <i>v.</i> S., P. & S. Ry. Co. (38 I. C. C., 16) .....	736
Memphis <i>v.</i> C., R. I. & P. Ry. Co. (43 I. C. C., 121) .....	360
Spokane <i>v.</i> N. P. Ry. Co. (15 I. C. C., 376) .....	30
Clyde Coal Co. <i>v.</i> P. R. R. Co. (23 I. C. C., 135) .....	713
Coke Producers Asso. of Connellsville <i>v.</i> B. & O. R. R. Co. (27 I. C. C., 125) .....	137
Commercial Exchange of Philadelphia <i>v.</i> :	
P. R. R. Co. (38 I. C. C., 320) .....	147
P. R. R. Co. (38 I. C. C., 551) .....	599, 613
Corn Belt Meat Producers' Asso. <i>v.</i> C., B. & Q. Ry. Co. (14 I. C. C., 376) .....	301
Corporation Commission of—	
New Mexico <i>v.</i> A., T. & S. F. Ry. Co. (34 I. C. C., 292) ..	65
Oklahoma <i>v.</i> A. & S. Ry. Co. (26 I. C. C., 520) .....	310, 362
Cosby <i>v.</i> Richmond Transfer Co. (23 I. C. C., 72) .....	203
Covington Stock Yards Co. <i>v.</i> Keith (139 U. S., 128) .....	318
Delaware, L. & W. Coal Co. <i>v.</i> D., L. & W. R. R. Co. (46 I. C. C., 506) .....	363
Detroit & M. R. Co. <i>v.</i> Michigan Railroad Commission (203 Fed., 864) .....	298
Detroit Board of Trade <i>v.</i> G. T. Ry. Co. of Canada (2 I. C. C., 315) .....	422
Detroit Coal Co. <i>v.</i> M. C. R. R. Co. (46 I. C. C., 231) .....	631
Detroit Reconsigning Case (25 I. C. C., 392) .....	613
Detroit Traffic Association <i>v.</i> L. S. & M. S. Ry. Co. (21 I. C. C., 257) .....	613, 629
Doran & Co. <i>v.</i> N., C. & St. L. Ry. (33 I. C. C., 523) .....	260, 613
Drake Marble & Tile Co. <i>v.</i> N. P. Ry. Co. (37 I. C. C., 512) ..	98
Duncan & Co. <i>v.</i> :	
N., C. & St. L. Ry. (21 I. C. C., 186) .....	270
N., C. & St. L. Ry. (35 I. C. C., 477) .....	270
N., C. & St. L. Ry. Co. (16 I. C. C., 590) .....	270
Eastern Live Stock Case (36 I. C. C., 675) .....	307, 390
Emery & Co. <i>v.</i> B. & M. R. R. (38 I. C. C., 636) .....	200
Ferguson Saw Mill Co. <i>v.</i> St. L., I. M. & S. Ry. Co. (18 I. C. C., 396) .....	712
Fifteen Per Cent Case (45 I. C. C., 303) .....	102
	110, 359, 428, 459, 462, 544
Five Per Cent Case (31 I. C. C., 351) .....	17, 461, 509
Five Per Cent Case (32 I. C. C., 325) .....	55,
	76, 81, 82, 255, 461, 467, 694
Flour City S. S. Co. <i>v.</i> L. V. R. R. Co. (24 I. C. C., 179) .....	369
Fourth Section Violations in the Southeast (30 I. C. C., 153) ..	484,
	521, 525
	47 I. C. C.



	Page.
Fourth Section Violations in the Southeast (32 I. C. C., 61) ..	484, 525
General Electric Co. v. N. Y. C. & H. R. R. R. Co. (14 I. C. C., 237) .....	515
Gulf, C. & S. F. Ry. Co. v. Texas (204 U. S., 403) .....	724
Henderson Commercial Club v. I. C. R. R. Co. (36 I. C. C., 20) ..	265
Heyser Lumber Co. v. K. & W. V. R. R. Co. (37 I. C. C., 609) ..	70
Holmes & Hallowell Co. v. G. N. Ry. Co. (37 I. C. C., 627) ....	298
Hooker-Hendricks Hardware Co. v. M., K. & T. Ry. Co. (34 I. C. C., 3) .....	213
Houston, E. & W. T. Ry. Co. v. United States (234 U. S., 342) ..	320
Hoyt & Bergen v. C. & N. W. Ry. Co. (32 I. C. C., 319) .....	399
Hutchinson Mill Co. v. A., T. & S. F. Ry. Co. (25 I. C. C., 180) ..	68
Illinois Coal Cases (32 I. C. C., 659) .....	318, 702
Independent Brewing Asso. v. C., M. & St. P. Ry. Co. (42 I. C. C., 129) .....	216
Industrial Railways Case (29 I. C. C., 212) .....	513
In re:	
Alleged Unreasonable Rates on Meats (22 I. C. C., 160) ...	307
Alleged Unreasonable Rates on Meats (23 I. C. C., 656) ..	310, 701
Atchison, Topeka & Santa Fe Ry. Co. (3 Mo. P. S. C., 74) ..	297
Class and Commodity Rates (38 I. C. C., 411) .....	510, 581
Coal to South Dakota (46 I. C. C., 628) .....	750
Differential Rates (11 I. C. C., 13) .....	452, 683
Express Rates, Practices, Accounts, and Revenues (43 I. C. C., 510) .....	336, 344
Midcontinent Oil Rates (36 I. C. C., 109) .....	356
Minimum Charges on Bulky Articles (33 I. C. C., 378) ...	341
Minimum Charges on Bulky Articles (38 I. C. C., 257) ...	341
Proportional Rates to Ohio River Crossings (43 I. C. C., 458) .....	270
Transportation of Wool, Hides, and Pelts (23 I. C. C., 151)	265
Weighing of Freight by Carrier (28 I. C. C., 7) .....	550
In re Advances:	
Car Spotting Charges (34 I. C. C., 609) .....	513, 630
C. F. A. Class Scale Case (45 I. C. C., 254) .....	115, 340, 360, 437, 450, 544
C. F. A. Class Scale Case (46 I. C. C., 475) ...	581
Classification of Cylinders (38 I. C. C., 198) .....	23
Classification of Cylinders and Grate Bars (43 I. C. C., 443) .....	23
Classification Nesting Rule (37 I. C. C., 477) .....	37
Detroit Switching Charges (28 I. C. C., 494) .....	586
Fabrication in Transit Charges (29 I. C. C., 70) .....	265
Flour Storage (46 I. C. C., 295) .....	147

## In re Advances—Continued.

	Page.
Hold Freight Free Time (47 I. C. C., 141) .....	165
Indiana and Illinois Coal (40 I. C. C., 603) .....	630
Iron and Steel to Colorado Points (41 I. C. C., 76) .....	125
Kansas City & Memphis Railway Co. Rate Cancellation (28 I. C. C., 640) .....	242
Lighterage and Storage Regulations at New York (35 I. C. C., 47) .....	142, 157, 330, 630, 646, 673
Live Stock from Texas and Other States (25 I. C. C., 63) ..	310
Lumber from Southern Points (34 I. C. C., 652) .....	349, 706
Lumber Rates from Helena, Ark., and other points (41 I. C. C., 565) .....	350, 541
Lumber Rates from Points in Arkansas (34 I. C. C., 102) ..	354
Lumber Transit Privileges at Buffalo, N. Y. (33 I. C. C., 601) .....	586
Marble from Rutland, Vt. (38 I. C. C., 12) .....	98
Missouri River-Illinois Wheat and Flour Rates (27 I. C. C., 286) .....	265
New York Harbor Storage (47 I. C. C., 141) .....	165, 729
New York Storage (40 I. C. C., 265) .....	148, 158
Official Classification Rates on Paper (38 I. C. C., 120) ..	435
Official Classification Ratings (37 I. C. C., 166) .....	94
Petroleum to Kentucky Stations (43 I. C. C., 35) .....	359
Rates in Chicago Switching District (34 I. C. C., 234) ...	630
Rates on Cream and Condensed Milk (21 I. C. C., 522) ..	94
Rates on Grain Milled in Transit (35 I. C. C., 27) .....	270
Rates on Iron and Steel Articles (30 I. C. C., 337) .....	118
Rice from Texas and Louisiana (40 I. C. C., 285) .....	547, 568
Rice from Texas and Louisiana, No. 2 (43 I. C. C., 29) ..	572
Southeastern Lumber (42 I. C. C., 548) .....	348
Stone and Marble from Chicago and Peoria (34 I. C. C., 390) .....	98
Stopping of Cars in Transit to Complete Loading (36 I. C. C., 130) .....	555
Switching Charges at Milwaukee, Wis. (32 I. C. C., 509) ..	586
Transportation and Disposal of Waste Materials (34 I. C. C., 337) .....	514
Transportation of Live Stock from New Mexico to Kansas City, Mo. (25 I. C. C., 63) .....	310
Western Passenger Fares (37 I. C. C., 1) .....	281
Western Rate Advance Case—1915 (35 I. C. C., 497) ..	50, 545, 630
Interior Iowa Cases (46 I. C. C., 39) .....	128
Interstate C. C. v.:	
Humboldt S. S. Co. (224 U. S., 474) .....	371
Stickney (215 U. S., 98) .....	630
	47 I. C. C.

TABLE OF CASES CITED.

XIX

	Page.
Interstate Packing Co. v. C. & N. W. Ry. Co. (42 I. C. C., 189)	400
Iowa & Southwestern Ry. Co. v. C., B. & Q. R. R. Co. (32 I. C. C., 172) .....	587
Iowa State Board of R. R. Com'rs v. A. E. R. R. Co. (28 I. C. C., 193) .....	310
Iron and Steel Cases (36 I. C. C., 86) .....	123
Kanotex Refining Co. v.:	
A., T. & S. F. Ry Co. (34 I. C. C., 271) .....	529
A., T. & S. F. Ry. Co. (46 I. C. C., 495) .....	361
Kaye & Carter Lumber Co. v. M. & I. Ry Co. (17 I. C. C., 209) ..	250
Kehoe & Co. v. I. C. R. R. Co. (14 I. C. C., 541) .....	633
Kosmos Portland Cement Co. v. I. C. R. R. Co. (42 I. C. C., 377)	207
Lake Line Applications Under Panama Canal Act (33 I. C. C., 699) .....	371
Lathrop Lumber Co. v. A. G. S. R. R. Co. (27 I. C. C., 250) ..	581
Louisville & N. R. R. Co. v. United States (238 U. S., 1) .....	304
McCaull-Dinsmore Co. v. G. N. Ry. Co. (41 I. C. C., 178) .....	581
Mason Bros. v. S. P. Co. (28 I. C. C., 402) .....	61
Massie & Pierce Lumber Co. v. N. & W. Ry. Co. (33 I. C. C., 14) .....	462, 519
Meeker & Co. v. L. V. R. R. Co. (236 U. S., 412) .....	209
Memphis Freight Bureau v.:	
I. C. R. R. Co. (30 I. C. C., 471) .....	547, 568
K. C. S. Ry. Co. (17 I. C. C., 90) .....	471
Merchants & Manufacturers Asso. v. P. R. R. Co. (23 I. C. C., 474) .....	586
Merchants Cotton Press & Storage Co. v. I. C. R. R. Co. (17 I. C. C., 98) .....	202
Michigan Percentage Cases (47 I. C. C., 409) .....	706
Middletown Car Co. v. P. R. R. Co. (32 I. C. C., 185) .....	273
Minneapolis Civic & Commerce Asso. v. C., M. & St. P. Ry. Co. (30 I. C. C., 663) .....	234
Missouri & Illinois Coal Co. v. I. C. R. R. Co. (22 I. C. C., 39) ..	537
Missouri Rate Cases (230 U. S., 474) .....	297
Missouri River-Nebraska Cases (40 I. C. C., 201) .....	317
Mixed Car Dealers' Asso. v. D., L. & W. R. R. Co. (33 I. C. C., 133) .....	274
Muskogee Traffic Bureau v. A., T. & S. F. Ry. Co. (17 I. C. C., 169) .....	713
Mutual Rice Trade & Devel. Asso. Houston v. I. & G. N. R. R. (23 I. C. C., 219) .....	568
National Casket Co. v. S. Ry. Co. (31 I. C. C., 678) .....	273
National Clay Works v. M. & St. L. R. R. Co. (38 I. C. C., 353) ..	70
47 I. C. C.	

	Page.
National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co. (43 I. C. C., 392) .....	630
National Society of Record Assos. v. A. & R. R. R. Co. (40 I. C. C., 347) .....	335
Nebraska Bridge Supply & Lumber Co. v. N., C. & St. L. Ry. (35 I. C. C., 86) .....	39
New England Coal & Coke Co. v. N. & W. Ry. Co. (33 I. C. C., 276) .....	333
New York Produce Exchange v.:	
B. & O. R. R. Co. (7 I. C. C., 612) .....	452, 683
B. & O. R. R. Co. (46 I. C. C., 666) .....	142, 175, 728
Omaha Grain Exchange v. N. P. Ry. Co. (30 I. C. C., 572) ...	702
Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co. (16 I. C. C., 134) .....	240
Paducah Board of Trade v.:	
C., B. & Q. R. R. Co. (37 I. C. C., 743) .....	705
I. C. R. R. Co. (29 I. C. C., 583) .....	725
Phillips v. Grand Trunk Railway (236 U. S., 662) .....	375
Pittsburgh & Ohio Mining Co. v. B. & O. R. R. Co. (40 I. C. C., 408) .....	156
Pittsburgh Steel Co. v. P. & L. E. R. R. Co. (39 I. C. C., 312) ..	514
Planters' Compress Co. v. C., C., C. & St. L. Ry. Co. (11 I. C. C., 382) .....	78
Poehlman Bros. Co. v. C., M. & St. P. Ry. Co. (30 I. C. C., 89) ..	371
Prest-O-Lite Co. v. B. & A. R. R. Co. (36 I. C. C., 545) .....	23
Price Iron & Steel Co. v. I. H. B. R. R. Co. (U. R. A-731) ....	216
Railroad Commission of—	
Iowa v. C., R. I. & P. Ry. Co. (29 I. C. C., 396) .....	482
Kentucky v. L. & N. R. R. Co. (13 I. C. C., 300) .....	510
Louisiana v. A. H. T. Ry. Co. (41 I. C. C., 83) .....	307, 360, 546
Randolph Lumber Co. v. S. A. L. Ry. (13 I. C. C., 601) .....	519
Royal Milling Co. v. G. N. Ry. Co. (41 I. C. C., 29) .....	263
Saginaw Board of Trade v. G. T. Ry. Co. (17 I. C. C., 128) ....	411, 423, 442, 707
St. Louis & S. F. R. R. Co. v. Hadley (168 Fed., 317) .....	297
Schmidt & Sons v.:	
M. C. R. R. Co. (19 I. C. C., 535) .....	273
M. C. R. R. Co. (23 I. C. C., 684) .....	423
Seattle Chamber of Commerce v. G. N. Ry. Co. (30 I. C. C., 683) .....	587
Sheridan Chamber of Commerce v. C., B. & Q. R. R. Co. (26 I. C. C., 638) .....	754
Shreveport Case (See R. R. Comm. of La. v. A. H. T. Ry. Co.; Houston E. & W. T. Ry. Co. v. U. S.)	

	Page.
Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co. (40 I. C. C., 418) .....	279
Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co. (40 I. C. C., 738) .....	223
Southern Illinois Millers Asso. v. L. & N. R. R. Co. (23 I. C. C., 672) .....	265
Southern Ry. Co. v. United States (222 U. S., 20) .....	201
Southwestern Missouri Millers Club v. M., K. & T. Ry. Co. (22 I. C. C., 422) .....	713
Southwestern Produce Distributers v. Wabash R. R. Co. (20 I. C. C., 458) .....	202
Springfield Commercial Asso. v. P. R. R. Co. (28 I. C. C., 511) ..	424
Springfield Traffic Bureau v. St. L. & S. F. R. R. Co. (29 I. C. C., 600) .....	314
Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co. (14 I. C. C., 364) .....	754
State ex rel. Rhodes v. Public Service Commission of Missouri (194 S. W., 287) .....	290
State of—	
Kansas v. A., T. & S. F. Ry. Co. (27 I. C. C., 673) .....	123
Oklahoma v. C., R. I. & P. Ry. Co. (15 I. C. C., 42) .....	356
Stebbins v. D., L. & W. R. R. Co. (42 I. C. C., 150) .....	58
Stiritz v. N. O., M. & C. R. R. Co. (22 I. C. C., 578) .....	712
Stonega Coke & Coal Co. v.:	
L. & N. R. R. Co. (23 I. C. C., 17) .....	282
L. & N. R. R. Co. (39 I. C. C., 523) .....	282
Stowe-Fuller Co. v. Pennsylvania Co. (12 I. C. C., 215) .....	94
Stuarts Draft Milling Co. v. S. Ry. Co. (31 I. C. C., 623) .....	588
Suffern Grain Co. v. I. C. R. R. Co. (22 I. C. C., 178) .....	370
Tap Line Case (31 I. C. C., 490) .....	88
Thames & Mersey Ins. Co. v. United States (237 U. S., 19) ...	201
Traffic Bureau of Sioux City Commercial Club v.:	
A. & W. Ry. Co. (47 I. C. C., 347) .....	541
A. & S. R. R. R. Co. (24 I. C. C., 177) .....	354
Trans-Mississippi Grain Co. v. C., B. & Q. R. R. Co. (41 I. C. C., 612) .....	375
Trier v. C., St. P., M. & O. Ry. Co. (30 I. C. C., 352) .....	298
Union Made Garment Mfrs. Asso. v. C. & N. W. Ry. Co. (16 I. C. C., 405) .....	63
United States v.:	
L. & N. R. R. Co. (235 U. S., 314) .....	271
Terminal R. R. Asso. of St. Louis (224 U. S., 383) .....	318
Union Stock Yard & Transit Co. (226 U. S., 286) .....	318
47 I. C. C.	

	Page.
Van Dusen Harrington Co. v. C., M. & St. P. Ry. Co. (35 I. C. C., 172) .....	59
Warnock Co. v. C. & N. W. Ry. Co. (21 I. C. C., 546) .....	314
Waverly Oil Works Co. v. P. R. R. Co. (28 I. C. C., 621) .....	725
Weatherford Chamber of Commerce v. M., K. & T. Ry. Co. (31 I. C. C., 665) .....	55
Wichita Board of Trade v. A. & S. Ry. Co. (29 I. C. C., 376) ..	397
Williams Co. v. V., S. & P. Ry. Co. (16 I. C. C., 482) .....	702
Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co. (33 I. C. C., 33) .....	540
Wright v. B. & O. R. R. Co. (32 Penn. Super., 5) .....	407
	47 I. C. C.

# INTERSTATE COMMERCE COMMISSION REPORTS.

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No. 8297.<sup>1</sup>

ACME CEMENT PLASTER COMPANY

v.

AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY  
ET AL.

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*Submitted April 20, 1917. Decided October 2, 1917.*

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Defendants' carload rates on gypsum hollow building tile from Grand Rapids, Mich., to points on and east of the Mississippi River and on and north of the Ohio River as far east as the eastern boundary of central freight association territory, found to subject complainants and their traffic to undue prejudice and disadvantage and to give to the contemporaneous shippers of clay hollow building tile and their traffic, between the same points, an undue preference and advantage. These cases will be held open on the question of damage and the claim to an award of reparation.

*Moses N. Sale and S. H. West* for Acme Cement Plaster Company.  
*John S. Burchmore and Luther M. Walter* for American Cement Plaster Company.

*Elvert M. Davis, Frederick B. Brown, B. J. Torbron, and J. T. Johnston* for defendants.

## REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

These complaints, consolidated for hearing and disposition, allege that the defendants' carload rates on gypsum hollow building tile from Grand Rapids, Mich., to points on and east of the Mississippi River and on and north of the Ohio River as far east as the eastern boundary of central freight association territory are unreasonable and unduly prejudicial to the extent they exceed the contemporaneous rates on clay hollow building tile for transportation in the territory referred to, and they ask that reparation be awarded. The evidence offered by complainants relates chiefly to the issue of undue prejudice.

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<sup>1</sup> This report also embraces No. 8386, American Cement Plaster Company v. Michigan Central Railroad Company et al.



The rates on gypsum tile, except to Chicago and possibly a few other points to which commodity rates on a lower basis are published, are made on the basis of 83½ per cent of the sixth-class rates, and are the same as apply on stucco and wall plaster. The rates on clay tile are commodity rates and are the same as apply on brick. The difference between the rates on the two kinds of tile between representative points is shown by the following table:

From—	To—	Miles.	Gypsum.	Clay.
Grand Rapids, Mich.....	Chicago, Ill.....	178	\$1.58	.....
Terre Haute, Ind.....	do.....	178	.....	\$1.00
Grand Rapids, Mich.....	Milwaukee, Wis.....	263	1.90	.....
Terre Haute, Ind.....	do.....	263	.....	1.42
Grand Rapids, Mich.....	Ashtabula, Ohio.....	332	2.32	.....
Brazil, Ind.....	do.....	395	.....	1.84
Grand Rapids, Mich.....	Buffalo, N. Y.....	379	2.52	.....
Nelsonville, Ohio.....	do.....	384	.....	1.90
Grand Rapids, Mich.....	Cincinnati, Ohio.....	308	2.10	.....
Brazil, Ind.....	Zanesville, Ohio.....	309	.....	1.74
Grand Rapids, Mich.....	Toledo, Ohio.....	166	1.58	.....
Terre Haute, Ind.....	Louisville, Ky.....	182	.....	1.32
Grand Rapids, Mich.....	Cleveland, Ohio.....	278	2.10	.....
Brazil, Ind.....	do.....	340	.....	1.74

The carriers serving Grand Rapids publish higher rates on hollow gypsum tile than on hollow clay tile from Grand Rapids to points in central freight association territory and between other points in that territory. In these rates there is general concurrence by central freight association lines.

The official, western, and southern classifications make no distinction between hollow building tile made from gypsum and the similar product made from clay.

The gypsum tile and the clay tile are much alike in appearance, except that the gypsum tile are made in blocks 2½ feet long and 1 foot wide and the clay tile in blocks 1 foot long and 1 foot wide. Both kinds range in thickness from 2 to 6 inches and both kinds are perforated lengthwise with openings varying in number and diameter with the thickness of the tile.

The gypsum tile are made from stucco or ground gypsum rock. The stucco has been calcined in the making and the process of manufacturing the tile is merely to mix the stucco with water and wood fiber, mold the mass to form, and set the finished block out in the air to dry. One of the complainants adds a chemical to its mixture. The clay tile, which are made of clay mixed with water to a workable state, are made by molding the mass to form and then baking or burning. The complainants say that the only difference in the two processes of manufacture is really in the order of the steps, the gypsum tile being calcined or burned in arriving at the stucco stage and not after the block is molded, and the clay tile being first molded to form and then burned or baked.

No figures are presented upon the cost of producing the clay tile, but the record seems to indicate that it is less than the cost of producing the gypsum tile. The clay tile bring in the market about 1 or 2 cents per square foot less than the gypsum tile. Both kinds are sold by the square foot.

The clay tile are heavier per cubical unit than the gypsum tile. One of the complainants presented a comparison of weights for the various sizes of the two kinds of tile from which it appears, for example, that the 3-inch clay tile weigh 17 pounds per square foot and the 3-inch gypsum tile 9.25 pounds per square foot. The carriers state that from actual tests the 3-inch clay tile weigh 15 pounds per square foot and the 3-inch gypsum tile 9.6 pounds per square foot. The gypsum tile, however, can be loaded about as heavily as the clay tile, the shipments usually weighing from 45,000 to 65,000 pounds per car. One of the shipments on which reparation is claimed is stated to have weighed 71,900 pounds. The minimum carload weight for the clay tile varies from 40,000 to 50,000 pounds; the minimum for the gypsum tile is usually 40,000 pounds. The complainants state that they would not object to the same minimum on the gypsum tile as on the clay tile.

The gypsum tile are loaded in tiers, with strips of lath between, nailed to the tile. The clay tile are loaded with straw between. No statement of the claims for damage to the clay tile are submitted, but they appear to be heavier than on the gypsum tile. One of the complainants testified that in connection with 130 cars of gypsum tile shipped from Grand Rapids prior to January 1, 1915, it made claims for damage on only 4 cars, for a total amount of \$19.96. The gypsum tile, if broken in transit, can be cemented together again and used; the clay tile can not be.

Clay tile can be shipped in open equipment as well as in box cars, so far as exposure to the elements is concerned. Gypsum tile are shipped in box cars because of their capacity for absorbing moisture. Excessive moisture affects their tensile strength. One of the complainants testified that it would not hesitate to ship in open cars in times of "very severe car shortage," since the gypsum tile can be dried out and fully restored to their normal state if not handled when wet. It appears, however, that open equipment is not really practicable for either kind of tile because of the inability to load, or difficulty in loading, to the prescribed carload minimum or desired greater weight.

The gypsum tile are not available for all the uses of the clay tile and are confined principally to partition and furring work where no great degree of moisture is encountered. They are not used for flooring and arches. The clay tile are used for all the purposes of the

gypsum tile, and for others, including flooring and arches and work in damp cellars or basements. Where both kinds can be used the architect usually expresses no preference for either kind but leaves the choice to the contractor. The clay tile are the gypsum tile's only competitor. The principal use of both kinds is in the construction of the larger office buildings and hotels.

The defendants contend that in view of the foregoing limitations upon their use, the gypsum tile can not be said to be strictly competitive with the clay product, and that they can not hope fully to compete with the clay tile's wider range of uses, greater and cheaper production, and shorter average hauls. The clay tile are produced at many points throughout the territory affected, the gypsum tile at only a few points. About 95 per cent of the hollow building tile now used throughout the territory affected are those made of clay.

The defendants point to certain advantages of the gypsum tile over the clay tile. They are more easily handled and expeditiously laid because of the larger size of the block, which enables a workman to lay from 25 per cent to 33 per cent more of the gypsum tile than of the clay tile, according to estimates of record. They can be sawed to any shape for easy fitting around plumbing and other fixtures, and the wall can later be easily altered if desired. There is also a saving in waste over the clay tile, and the superstructure is lighter. Likewise, reference is made to certain advantages in connection with the plastering.

The testimony on the whole seems to indicate that each kind of tile has its advantages and disadvantages, dependent upon the needs of the wall to be erected. A wall made of one kind is said when erected and plastered to be as satisfactory as a wall made from the other and not to differ from it in appearance.

The defendants also show that at the same rate and aggregate freight charges they would, on account of the lighter weight of the gypsum tile, transport a greater wall surface of the gypsum tile than of the clay tile, to the advantage of the shipper of the gypsum tile, who buys or sells by the square foot, as does the shipper of the clay tile; and that for the same reason they would receive fewer carloads of the gypsum tile than of the clay tile, and consequently less revenue at the same rate, from the same number of thousand feet of each kind offered for transportation.

The defendants suggest that an order requiring a reduction in the rates on gypsum tile, which are now the same as apply on the stucco from which the tile are made, as explained, would result in an adjustment under which the rate on the manufactured product would be less than on the raw material, contrary to the usual rule. Cement plaster, however, is the principal product of stucco, the tile having

been originally, and being now, manufactured primarily for the purpose of disposing of a surplus of stucco. The plaster is not competitive with tile, but the two kinds of tile are keenly competitive.

We find no such difference in value, risk of carriage, carload weight, or other incident of transportation as to warrant a rate on the gypsum tile so much higher than on the clay tile. We therefore find that the defendants' carload rates on gypsum hollow building tile from Grand Rapids to points on and east of the Mississippi River and on and north of the Ohio River as far east as the eastern boundary of central freight association territory subject the complainants and their traffic to undue prejudice and disadvantage and give to the contemporaneous shippers of clay hollow building tile and their traffic transported in the territory referred to an undue preference and advantage.

With reference to reparation, the complainant in No. 8297 has offered evidence of record intended to show that it has been damaged by the relationship of rates herein found to be unduly prejudicial; the complainant in No. 8386 deferred the introduction of such evidence pending the determination of the issues of unreasonableness and undue prejudice. These cases will be held open upon the question of damage and the claim to an award of reparation.

The defendants will be required on or before December 1, 1917, to submit their schedules proposing a removal of the undue preference and advantage herein condemned.

No. 8817.  
PESHTIGO LUMBER COMPANY  
v.  
WISCONSIN NORTHWESTERN RAILWAY ET AL.

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*Submitted January 20, 1917. Decided October 6, 1917.*

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Claims for reparation on account of the alleged misrouting of various shipments of saw logs from Taylor's Rapids, Wis., to Peshtigo, Wis., over an interstate route, denied. Complaint dismissed.

*John S. Burchmore and Luther M. Walter* for complainant.  
*Cassoday, Butler, Lamb & Foster; C. R. Hillyer; and Karl D. Loos* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Peshtigo, Wis. By complaint, filed April 1, 1916, as amended, it alleges that it was damaged, due to the misrouting of 547 carloads of saw logs, shipped from Taylor's Rapids, Wis., to Peshtigo, during the period from April 3 to July 1, 1914, inclusive. Reparation is asked. Rates are stated in cents per 100 pounds, except as otherwise noted.

The shipments moved interstate over the Wisconsin Northwestern and the Dunbar & Wausaukee railways, from Taylor's Rapids to Constine, Wis., and thence over the Wisconsin & Michigan Railway to Peshtigo, approximately 105 miles. Charges were collected thereon based on a joint rate of 3 cents. There was and is an intrastate route between the points in question by way of the Wisconsin & Northwestern to Girard Junction, Wis., the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, to Bagley Junction, Wis., and the Wisconsin & Michigan to Peshtigo. There was no joint rate in effect at the time of the movement over the latter route, which is slightly shorter than the route traversed. The Milwaukee tariff in effect at the time of movement, and which was concurred in by the Wisconsin Northwestern, is cited by complainant as naming a rate of 2 cents from Taylor's Rapids to Bagley Junction. The Wisconsin & Michigan published a rate of \$3 per car on logs from Bagley Junction to Peshtigo "on shipments coming from points on the C., M. & St. P. Ry., to be concentrated at Peshtigo, Wis., and reshipped via W. & M. Ry." It also published a rate of 2 cents, minimum 50,000 pounds, except on cedar, on which the minimum was

40,000 pounds, from Bagley Junction to Peshtigo without regard to where the lumber originated. Complainant, being under the impression that a combination rate of 2 cents to Bagley and \$3 per car beyond was applicable to its shipments, gave general routing instructions in writing to the initial carrier to forward all shipments over the Milwaukee route. The Wisconsin Northwestern declined to accept such instructions and advised complainant to use the route by way of Constance. Some of the routing instructions given covering the shipments showed only the delivering carrier, Wisconsin & Michigan; others showed, in addition, the Dunbar & Wausaukee as an intermediate carrier; and the remainder were unrouted. Complainant contends that the unrouted shipments and those in which only the delivering carrier was designated were misrouted, and that the shipments routed by way of the Dunbar & Wausaukee were in effect misrouted because of the refusal of the initial carrier to accept cars for movement over the Milwaukee route.

The preliminary question to be determined is, Would the \$3 per car rate from Bagley Junction to Peshtigo have been applicable had the shipments moved over the intrastate route? It is insisted for complainant that the provision in the tariff that this rate "applies only on shipments coming from points on the C. M. & St. P. Ry." includes not only shipments originating at points on the Milwaukee but also those received by it from connections. It is contended for defendant Wisconsin Northwestern that this was limited to shipments originating on the Milwaukee, and defendant Wisconsin & Michigan that the publication of that rate was the result of an operating contract between the Wisconsin & Michigan and the Milwaukee whereby the former line was given trackage rights over the Milwaukee from Bagley Junction to Marinette, Wis., and Menominee, Mich., for similar rights granted to the Milwaukee over the Wisconsin & Michigan from Bagley Junction to Peshtigo, and that this was done in order to open up Peshtigo to shipments from points on the Milwaukee. It is also observed that the 2-cent rate cited by complainant as applicable from Taylor's Rapids to Bagley Junction was restricted to logs to be manufactured and the products shipped beyond over the Milwaukee, and therefore was inapplicable to the shipments in question. The application of the rate of \$3 per car from Bagley Junction to Peshtigo was plainly limited to shipments originating at points on the Milwaukee. The only rate legally applicable over the intrastate route at the time of movement was the lumber rate of 8½ cents to Bagley Junction plus the 2-cent rate beyond.

As the rate applicable and charged over the route of movement was lower than the combination rate legally applicable over the intrastate route, it is unnecessary to consider the question of misrouting. An order will be entered dismissing the complaint.



No. 9047.  
**CAMPBELL & CLEAVER**  
*v.*  
**ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY**  
**ET AL.**

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*Submitted December 5, 1916. Decided October 6, 1917.*

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Concentration and compression service at Lawton, Okla., canceled and subsequently restored, found to have resulted in unreasonable charges for the transportation of cotton from Davidson and Snyder, Okla., to Texas City, Tex., and New Orleans, La., for export. Reparation awarded.

*C. M. Smith* deal for complainants.

*R. R. Lethem* for St. Louis & San Francisco Railroad Company and its receivers.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

Complainants are W. E. Campbell and A. H. Cleaver, copartners, formerly engaged in the cotton business at Dallas, Tex., under the firm name of Campbell & Cleaver. By complaint, filed April 22, 1916, as amended, they allege that the charges collected by defendants for the transportation of 121 bales of cotton shipped during the period from September 21 to October 13, 1914, inclusive, from Davidson and Snyder, Okla., concentrated at Lawton, Okla., and subsequently reshipped to Texas City, Tex., and New Orleans, La., for export, were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The cotton moved into Lawton over the St. Louis & San Francisco Railroad: 83 bales, which weighed 43,990 pounds, from Davidson, and 38 bales, which weighed 19,000 pounds, from Snyder. Charges were assessed thereon at rates of 30 cents. The rates legally applicable to Lawton were 41 cents from Davidson and 29 cents from Snyder. It therefore appears that the shipments from Davidson were undercharged and the shipments from Snyder overcharged. From Lawton the shipments moved over various routes, those originating at Davidson apparently to Texas City, and those originating at Snyder to New Orleans, destined to Liverpool, England, and charges were collected at any-quantity rates of 70 cents to Texas City and 71.5 cents to New Orleans, legally applicable.

For a long time prior to October 22, 1913, defendants' tariffs provided for concentration and compression of cotton at Lawton and at

other points on their lines in the same general territory on the basis of the through rates in effect from points of origin to final destinations. Effective October 22, 1913, the service was withdrawn from Lawton through a misunderstanding, but was continued in effect at other points. It was reestablished at Lawton November 25, 1914, and is still in effect. These shipments moved into Lawton prior to the reestablishment of the concentration and compression service.

Complainants ask reparation based on the difference between the combination rates charged and the joint through rates contemporaneously in effect of 70 and 75 cents from Davidson and Snyder, respectively, to Texas City, and 71.5 and 76.5 cents, respectively, to New Orleans. Defendants offered no evidence at the hearing. The St. Louis & San Francisco Railroad expressed willingness on our informal docket to make reparation. The burden was upon the carriers to justify the resulting increase in the charge. This they have not done.

In *Bulley & Son v. St. L. & S. F. R. R. Co.*, 45 I. C. C., 171, we found that the withdrawal of the service here in question resulted in the assessment of unreasonable charges on cotton from Davidson and other points in Oklahoma to New Orleans for export. Following that case and upon the record, we find that the charges collected on the shipments were unreasonable to the extent that they exceeded the charges that would have accrued at the joint rates contemporaneously in effect from Davidson and Snyder to Texas City and New Orleans; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Collection of the above-mentioned undercharge may be waived.

As the concentration and compression service has been in effect at Lawton for more than two years, no order for the future is necessary.

47 I. C. C.



No. 9048.  
**BLATCHFORD CALF MEAL FACTORY**  
*v.*  
**ELGIN, JOLIET & EASTERN RAILWAY COMPANY ET AL.**

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*Submitted January 25, 1917. Decided October 6, 1917.*

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Rates on live-stock feed in carloads and on live-stock feed and poultry feed in mixed carloads from Waukegan, Ill., to various destinations in western trunk line territory found to have been unreasonable. Reparation awarded.

*Walter E. McCornack* for complainant.

*T. E. Bond* for Elgin, Joliet & Eastern Railway Company.

*R. H. Widdicombe* for Chicago & North Western Railway Company.

*E. R. Newman* for Wabash Railway Company.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION :**

Complainant is a corporation engaged in the manufacture and sale of live-stock and poultry feed at Waukegan, Ill., and is the successor in interest of John H. Barwell. By complaint, filed July 14, 1916, as amended, it alleges that the rates charged on certain carload shipments of live-stock feed and mixed carload shipments of live-stock feed and poultry feed shipped from Waukegan to various destinations in western trunk line territory, during the period from January 16, 1914, to May 20, 1915, inclusive, were unreasonable to the extent that they exceeded the rates contemporaneously applicable on grain and grain products. Reparation is asked. The claims were presented to the Commission informally within the statutory period.

The shipments consisted of live-stock feed and poultry feed, 75 per cent of the ingredients of which consisted of commodities listed in defendants' tariffs as grain products and accorded the grain products rates, and the remainder of commodities accorded a higher rate than that on grain products. Charges on the shipments were collected at the legally applicable class B rates provided for animal and poultry feeds in straight or mixed carloads. These rates in each instance exceeded the commodity rates contemporaneously applicable on grain products.

On August 15, 1914, all of the defendants published, to take effect October 1, 1914, the same rates on live-stock feed and poultry feed in

straight or mixed carloads as applied on grain products without restriction as to what percentage of ingredients of the feeds should consist of grain products. These rates did not become effective until August 14, 1915, owing to the suspension until that date of the tariffs in which they were published.

The value of the feeds shipped by complainant is said to be less than 3 cents per pound, which is approximately that of the grain products ingredients. The other ingredients are low-grade commodities, consisting of beans, pea meal, ground cocoa shells, beef and fish scraps, ground limestone, bone meal, anise, and salt. Various feeds, other than live-stock and poultry feeds, were and are generally accorded the same rates as those applicable to grain products. Some of the defendants express willingness to make reparation upon the basis sought.

We find that the rates assailed were unreasonable to the extent that they exceeded the rates contemporaneously applicable to grain products from and to the points referred to; that complainant and its predecessor made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that complainant is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

As the rates herein found reasonable have been in effect since August 14, 1915, no order for the future is necessary.

**No. 9286.**  
**CURTIS & YALE COMPANY**  
v.  
**CHICAGO & NORTH WESTERN RAILWAY COMPANY**  
**ET AL.**

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*Submitted March 10, 1917. Decided October 6, 1917.*

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Carload of sash and doors from Wausau, Wis., to Girardville, Pa., found not to have been misrouted. Complaint dismissed.

*A. E. Solie* for complainant.

*A. F. Cleveland* for defendants.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

Complainant is a corporation engaged in the manufacture and sale of building materials at Wausau, Wis. By complaint, filed October 20, 1916, it alleges that, due to misrouting by defendants, unreasonable charges were collected on a carload of sash and doors, shipped March 12, 1914, from Wausau, to Girardville, Pa. Reparation is asked. The claim was presented to the Commission informally within the statutory period. Rates are stated in cents per 100 pounds.

The shipment was routed by complainant by way of the Ann Arbor Railroad and Traders' Despatch, the latter a fast freight line, and a rate of 37½ cents was inserted in the bill of lading. It moved by way of the Chicago & North Western Railway, Ann Arbor, Wheeling & Lake Erie, New York, Chicago & St. Louis, and Lehigh Valley railroads, and Philadelphia & Reading Railway. An agent of the Wheeling & Lake Erie at Ironville, Ohio, added Philadelphia & Reading delivery to the billing, although Lehigh Valley delivery was desired. After the car arrived at destination the Philadelphia & Reading received instructions to make Lehigh Valley delivery and accordingly moved the car to Quakake, Pa., its junction with the Lehigh Valley, there being no connection between the Philadelphia & Reading and the Lehigh Valley at Girardville. It was returned to Girardville by way of the Lehigh Valley, a total distance of 35 miles. No joint through rate applied, and charges were collected in the sum of \$185.78, based upon a weight of 29,200 pounds and the following rates: 9½ cents, Wausau to Manitowoc, Wis.; 28

cents, Manitowoc to Girardville; and 9 cents, Girardville on the Philadelphia & Reading to Girardville on the Lehigh Valley.

It is contended on behalf of complainant that the shipment was correctly routed to secure Lehigh Valley delivery under the published tariffs and that the addition to the billing of Philadelphia & Reading delivery was not within the province of the carriers; that the Lehigh Valley necessarily formed a part of the route specified; and that if the billing had not shown Philadelphia & Reading delivery, the Lehigh Valley, in all probability, would have hauled the car through to destination.

The tariff publishing the 28-cent rate from Manitowoc to Girardville was subject to a separate tariff containing billing instructions. The billing book, which enumerated on its title-page the Lehigh Valley and Philadelphia & Reading among the lines over which the Traders' Despatch operated, showed Girardville as taking the Philadelphia rate basis for either Lehigh Valley or Philadelphia & Reading delivery.

Inasmuch as under the tariffs the Traders' Despatch operated into Girardville by way of the Philadelphia & Reading and the rate shown in the bill of lading applied over that road, it is clear that defendants complied with the instructions contained in the bill of lading. If complainant had specifically designated Lehigh Valley delivery the additional charges complained of would have been avoided.

We find that the shipment was not misrouted, and an order dismissing the complaint will be entered.

47 I. C. C.

No. 9420.  
SYRACUSE CHAMBER OF COMMERCE, FOR SYRACUSE  
ORNAMENTAL COMPANY,  
v.  
MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

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*Submitted March 26, 1917. Decided October 6, 1917.*

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Rate on wet wood pulp in carloads from Detroit, Mich., to Syracuse, N. Y.,  
found to have been unreasonable. Reparation awarded.

*J. W. Grady* for complainant.

*Frank H. Pyke* for Delaware, Lackawanna & Western Railroad  
Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This complaint was filed December 4, 1916, by the Syracuse Chamber of Commerce, an incorporated association of mercantile, manufacturing, and professional interests of Syracuse, N. Y., on behalf of A. M. Holstein, one of its members, who is engaged in the manufacture of furniture and burial cases at Syracuse under the name of the Syracuse Ornamental Company. The allegations are that the rate of 15.6 cents per 100 pounds charged by defendants for the transportation of three carloads of wet wood pulp from Detroit, Mich., to Syracuse, in January, April, and July, 1916, was unreasonable to the extent that it exceeded 13.7 cents per 100 pounds. Reparation is asked. Rates are stated in cents per 100 pounds.

Two of the shipments, aggregating 92,349 pounds, moved by way of the Michigan Central and the Delaware, Lackawanna & Western railroads, and charges were collected thereon in the sum of \$136.69. The rate applicable was the fifth-class rate of 15.6 cents governed by the official classification. The correct charges were \$144.06, so that these shipments were undercharged \$7.37. The other shipment, which weighed 44,437 pounds, moved by way of the Michigan Central and the New York Central railroads, and charges were collected thereon in the sum of \$69.32 at the applicable fifth-class rate of 15.6 cents. Prior to April 16, 1915, a commodity rate of 13.7 cents, minimum 40,000 pounds, applied over the routes of movement on wet wood pulp in carloads, from Detroit to Syracuse, but it is stated that, due to an error, the commodity rate was canceled on that date. On

August 1, 1916, the commodity rate was reestablished and still applies.

As the rate applicable represented an increase subsequent to January 1, 1910, the burden was on defendants to justify it. This they did not attempt to do, but, on the contrary, admitted that it was unreasonable to the extent that it exceeded 13.7 cents and are willing to make reparation accordingly.

We find that the rate applicable on the shipments was unreasonable to the extent that it exceeded 13.7 cents per 100 pounds; that A. M. Holstein made the shipments as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that he is entitled to reparation from the Michigan Central Railroad Company and the Delaware, Lackawanna & Western Railroad Company in the sum of \$10.17, with interest, and from the Michigan Central Railroad Company and the New York Central Railroad Company in the sum of \$8.44, with interest. The collection of the undercharge referred to may be waived. As the 13.7-cent rate has applied over the routes of movement since August 1, 1916, no order for the future is necessary.

An appropriate order will be entered.

47 L. C. C.

No. 9280.

CHAS. S. WEISSE & COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY  
ET AL.

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PORTION OF FOURTH SECTION APPLICATION No. 3786

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*Submitted January 22, 1917. Decided October 9, 1917.*

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1. Rate on harness leather in less than carloads from Sheboygan Falls, Wis., to St. Louis, Mo., found to have been unreasonable. Reparation awarded.
2. Fourth section relief denied.

*F. L. Hubbard and H. N. McEwen* for complainants.

*A. F. Cleveland* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are C. H. and L. A. Weisse, copartners engaged in the curing and tanning of leather at Sheboygan Falls, Wis. By complaint, filed October 26, 1916, they allege that the rate of 52.5 cents per 100 pounds charged by defendants on certain less-than-carload shipments of harness leather, shipped from Sheboygan Falls to St. Louis, Mo., during the period from November, 1914, to August, 1916, was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the rule of the fourth section which prohibits the charging of a through rate in excess of the aggregate of the intermediate rates. Reparation is asked. The claim was presented to the Commission informally within the statutory period. That portion of Fourth Section Application No. 3786, filed by the Chicago & North Western Railway, hereinafter called the North Western, in which authority is sought to continue to charge for the transportation of harness leather, in less than carloads, from Sheboygan Falls to St. Louis a rate which is higher as a through route than the aggregate of the intermediate rates was set for hearing with the complaint. Rates are stated in cents per 100 pounds.

The shipments moved over defendants' lines, through Milwaukee, Wis., and charges were collected thereon at the joint second-class rate of 52.5 cents, governed by the western classification. Contemporaneously the North Western published a commodity rate of 12

cents on the traffic in question from Sheboygan Falls to Milwaukee. Local shipments from Milwaukee to St. Louis are governed by the Illinois classification, which rated harness leather, less than carload, third class. Prior to November 16, 1914, defendants' third-class rate from Milwaukee to St. Louis was 31.5 cents. On that date it was increased to 33.1 cents, following *The Five Per Cent Case*, 31 I. C. C., 351. On May 1, 1917, defendants established a commodity rate of 45.1 cents, applicable to this traffic, from Sheboygan Falls to St. Louis, thereby eliminating the fourth section departure.

Complainants' allegations of unjust discrimination and undue prejudice are based upon the fact that defendants maintained a rate of 43.5 cents from Sheboygan, a station on the North Western 4.9 miles east of Sheboygan Falls, to St. Louis. On May 1, 1917, this rate was increased to 44.1 cents. It is not shown that the transportation conditions are the same from both points. Sheboygan is a lake port and has lake service, while Sheboygan Falls has not.

We find that the rate charged on the shipments is not shown to have been unjustly discriminatory or unduly prejudicial, but that it was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Milwaukee, viz, to Milwaukee, 12 cents; beyond Milwaukee, 31.5 cents prior to November 16, 1914, and 33.1 cents on and after that date. We further find that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

The fourth section relief will be denied.



No. 9056.  
**ACME STEEL GOODS COMPANY**  
v.  
**ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY**  
**ET AL.**

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*Submitted January 22, 1917. Decided October 6, 1917.*

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Present rating applied by defendants in the western classification territory on wood joint fasteners in less than carloads found to be unreasonable.

*Walter E. McCornack* and *H. B. Freck* for complainant.

*R. C. Fyfe* for defendants.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

Complainant is a corporation engaged in the manufacture and sale of steel and iron goods at Chicago, Ill. By complaint, filed July 19, 1916, it alleges that the third-class rating provided by the western classification upon, and applied by defendants to, the transportation of wood joint fasteners in less than carloads is unreasonable. The establishment of the fourth-class rating for the future is asked.

The fasteners, which vary in size, are made of flat steel wire corrugated and sharpened on one edge, and are used for the purpose of joining pieces of wood together. Two pieces of wood are placed edge to edge, the fasteners being driven in across the joint. Ninety per cent of these fasteners are shipped in bulk in kegs, barrels, and boxes, and 10 per cent in cartons packed in kegs, barrels, or boxes. The movement is largely in less-than-carload quantities.

Complainant relies principally upon comparisons of the rating assailed with the ratings of wood joint fasteners in the official and southern classifications, and with the ratings in all three classifications on steel dowel pins and nails, which are also used to fasten pieces of wood together.

The following table shows the ratings applicable on the commodities named in the classifications referred to:

	Western.		Official.		Southern.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Iron or steel:						
Wood joint fasteners, in bbls. or boxes.....	3	5	4	5	5	6
Dowel pins:						
In cartons, in bbls. or boxes .....	4	5	4	5	4	} Special iron.
In bulk, in bbls. or boxes .....	4	5	4	5	6	
Nails:						
In boxes.....	4	5	4	5	4	} Special iron.
In kegs.....	4	5	4	5	6	

The fasteners weigh 87.5 pounds per cubic foot and are valued at \$5.75 per 100 pounds. It was stated on behalf of complainant that steel dowel pins are worth \$5.50 per 100 pounds and weigh 74 pounds per cubic foot. Defendants' witness stated that eightpenny fence and common wire nails were worth \$1.75 per 100 pounds, but did not state their weight. The above-quoted ratings on nails in the western classification apply to nails or spikes, galvanized or plain; japanned or turned; cement, copper, brass, or bronze coated.

Round wire, from which nails and dowel pins are manufactured, and flat wire, from which fasteners are manufactured, are classified in the official and western classifications fifth class, in carloads, and fourth class, in less than carloads.

Defendants insist that fasteners are properly rated third class in less than carloads, and state that dowel pins and nails move in larger volume than fasteners and are less valuable. They cited, by way of comparison, numerous articles rated third class and fourth class in less than carloads in the western classification, but in most cases these articles are not closely analogous to the fasteners under consideration.

Defendants' witnesses also contend that it is one of the established principles of classification that manufactured articles should be rated higher than the raw material from which they are made, and state that their action in departing from this principle in the case of dowel pins and nails and adhering to it in the case of fasteners resulted from the fact that the former require a simpler manufacturing process, and exceed the value of the raw material by a less amount, than the latter.

We find that the rating assailed is, and for the future will be, unreasonable to the extent that it exceeds or may exceed the fourth-class rating from and to the points in question.

An appropriate order will be entered.

47 I. C. C.

No. 9017.  
C. L. GRAY LUMBER COMPANY  
v.  
MOBILE & OHIO RAILROAD COMPANY ET AL.

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*Submitted January 23, 1917. Decided October 6, 1917.*

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Switching charges in addition to the line-haul charges on lumber from Suqualena, Miss., to various interstate destinations, milled in transit at Meridian, Miss., found to have been unlawfully collected. Reparation awarded.

*C. H. Poythress* for complainant.

*W. H. Grumley* for Mobile & Ohio Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the wholesale lumber business at Meridian, Miss. By complaint, filed June 3, 1916, it alleges that the charges assessed on 40 carloads of lumber shipped during the period from May to August, 1915, from Suqualena, Miss., to Meridian, there concentrated and subsequently forwarded to various interstate destinations, were unreasonable to the extent that they included a charge of \$2.50 per car for inbound switching services performed at Meridian. Reparation is asked.

The shipments moved over the Meridian & Memphis Railway from Suqualena to Meridian, and were switched to the Rex Planing Mill over tracks operated jointly by the Alabama & Vicksburg and the New Orleans & Northeastern railways, the Meridian & Memphis being unable to make deliveries by its own rails. They moved outbound from the mill to various destinations in Tennessee, Kentucky, Illinois, and Michigan, over the Mobile & Ohio Railroad, and charges were collected thereon at the through rates legally applicable, plus a switching charge of \$2.50 per car, assessed for the switching service performed at Meridian. The real question presented is, whether defendants should have assessed the switching charges on this traffic in addition to the through rates.

During the period in question through rates applied on lumber in carloads from Suqualena and other points on the Meridian & Memphis to the destinations to which the shipments moved, with stoppage in transit at Meridian and other points; also on such lumber shipped into Meridian, there assorted, dried, graded, planed, and within six

months reshipped to those destinations. Equal rates were applicable from Meridian by competitive routes. Contemporaneously the New Orleans & Northeastern and the Alabama & Vicksburg provided a charge of \$2 per car on carload freight switched from the Meridian & Memphis to the Mobile & Ohio, and a charge of \$2.50 per car from the Meridian & Memphis to industries in Meridian located on the joint tracks of the New Orleans & Northeastern and the Alabama & Vicksburg. The Mobile & Ohio's tariffs provided and provide for absorptions at Meridian as follows:

**SWITCHING TO AND FROM THE MERIDIAN & MEMPHIS RAILWAY.**

On competitive traffic, carloads and less, received from the Meridian & Memphis Railway, the Mobile & Ohio Railroad will pay out of the proportion of the rates accruing from Meridian, Miss., the intermediate switching charge of the New Orleans & Northeastern Railroad, lawfully on file with the Interstate Commerce Commission, necessary to make delivery to the tracks of this company.

Except as otherwise provided herein, on carload freight traffic paying this company a freight rate other than for a terminal or switching service, from or to competitive points, the switching charge of the Alabama Great Southern R. R., Alabama & Vicksburg Ry., and the New Orleans & Northeastern R. R. lawfully on file with the Interstate Commerce Commission, will be absorbed out of the rate to or from Meridian, Miss.

At the present time there is a physical connection between the Meridian & Memphis and the Mobile & Ohio at Meridian and the switching services over the joint tracks of the Alabama & Vicksburg and the New Orleans & Northeastern are no longer necessary.

We find that the provisions above quoted, considered in the light of the through rates applicable to the traffic, covered absorption of the intermediate switching charge of \$2.50 per car; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the switching charges unlawfully collected and is entitled to reparation in the sum of \$100, with interest. An order will be entered accordingly.

No. 8811.  
PREST-O-LITE COMPANY, INCORPORATED,  
*v.*  
CINCINNATI, HAMILTON & DAYTON RAILWAY  
COMPANY ET AL.

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*Submitted December 15, 1916. Decided October 9, 1917.*

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Charges on acetylene gas cylinders in carloads from Speedway, Ind., to Atlanta, Ga., found unreasonable to the extent that the charges for the haul from Cincinnati, Ohio, to Atlanta exceeded those that would have accrued at the sixth-class rate of 41 cents per 100 pounds. Reparation awarded.

*Charles Conradis and Arthur B. Hayes* for complainant.

*R. Walton Moore and Edward H. Hart* for Cincinnati, New Orleans & Texas Pacific Railway Company; Central of Georgia Railway Company; and Southern Classification Committee.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of acetylene gas and steel cylinders or containers for the same at Indianapolis, Ind. By complaint, filed April 17, 1916, it alleges that the charges collected by defendants on two carloads of acetylene gas cylinders, shipped from Speedway, Ind., to Atlanta, Ga., February 26 and March 27, 1915, were unreasonable to the extent that the charges which accrued at the third and fourth class rates of 78 cents and 63 cents per 100 pounds, respectively, for the haul from Cincinnati, Ohio, to Atlanta, exceeded the charges that would have accrued at the sixth-class rate of 41 cents per 100 pounds contemporaneously in effect. Reparation is asked. Rates are stated in cents per 100 pounds.

The articles constituting the shipments were empty acetylene gas cylinders, which were to be charged with gas at complainant's branch at Atlanta. One shipment consisted of 38,704 pounds of coppered or nickeled cylinders and 340 pounds of painted cylinders and moved over the Cleveland, Cincinnati, Chicago & St. Louis Railway to Cincinnati and the Cincinnati, New Orleans & Texas Pacific and the Central of Georgia railways beyond. The other shipment consisted of 33,991 pounds of coppered or nickeled cylinders and 2,040 pounds of painted cylinders and moved over the Cincinnati, Hamilton & Dayton Railway to Cincinnati, and beyond over the route

traversed by the other shipment. Both cars contained a small quantity of articles other than cylinders, the rates on which are not in issue. For the haul from Speedway to Cincinnati charges were collected on all of the cylinders at the fifth-class rate of 10 cents, governed by the official classification. This rate is not specifically attacked. For the haul from Cincinnati to Atlanta charges aggregating \$582.01 were collected at the third-class rate of 78 cents on the coppered or nicked cylinders, and the fourth-class rate of 63 cents on the painted cylinders, governed by the southern classification.

Southern classification I. C. C. No. 19, in effect at the time of movement, rated cylinders other than coppered or nicked, in carloads, minimum weight 36,000 pounds, sixth class. Southern classification I. C. C. No. 20, effective August 20, 1915, rated coppered or nicked cylinders sixth class, in carloads, minimum weight 36,000 pounds, and this rating is still in effect. At the time of movement the sixth-class rate from Cincinnati to Atlanta, upon the basis of which complainant seeks reparation, was 41 cents. This rate was increased on January 1, 1916, to 46 cents. The only issue is with respect to reparation.

We have in other cases given a full recital of the nature of complainant's business and the characteristics of its cylinders from a transportation standpoint. *Prest-O-Lite Co. v. B. & A. R. R. Co.*, 36 I. C. C., 545; *Classification of Cylinders*, 38 I. C. C., 198; *Classification of Cylinders and Grate Bars*, 43 I. C. C., 443. Complainant relies principally upon the showing that at the time of movement the southern classification rated cylinders, other than coppered or nicked, in carloads, sixth class; that it did and does rate cylinders, returned empty, any quantity, sixth class, without regard to finish; that acetylene gas shipped in these cylinders, which is subject to the red label regulations governing the transportation of explosives, any quantity, is rated fifth class, no distinction being made with respect to the finish of the cylinders; and that since August 20, 1915, coppered or nicked cylinders, in carloads, have been rated sixth class.

Defendants' witnesses testified that the finish of these cylinders was a minor consideration so far as their classification is concerned, and that the description "coppered or nicked" was used merely as a convenient method of differentiating the kind of cylinders which are usually finished in that manner from the kind used for compressed air or gases or liquids under pressure, of which the carbonic acid tube is typical. It is stated that the latter class of cylinders are large, rough, iron shells, not susceptible to damage, easily handled, and of heavy weight and low value, which characteristics entitle them to a lower rating than the smaller and more highly finished coppered or nicked cylinders, of which it is stated only occasional

carload shipments are made. Defendants also showed that the coppered or nickeled cylinders are usually shipped with a pressure gauge attached and that they contain asbestos blocks saturated with acetone. The larger acetylene gas cylinders, which come within the class rated sixth class, in carloads, also contain the asbestos blocks and acetone, but are usually shipped without pressure gauges attached. It was stated for complainant that it had never made a claim for damage in transit to a pressure gauge attached to a coppered or nickeled cylinder. Defendants also introduced evidence tending to show that the rough cylinders in the "other than coppered or nickeled" class could be handled into and out of cars with greater facility and more economically than the coppered or nickeled cylinders, but this is unimportant in connection with carload shipments which are loaded and unloaded by shippers or consignees.

Much of the subject matter of defendants' evidence is discussed in detail in our reports in the cases above cited, and need not be here repeated. In all of those cases we have consistently refused to approve the making of a distinction, as a transportation matter, between coppered or nickeled cylinders and those not coppered or nickeled, and this record contains no basis for a different conclusion.

We find that the charges assailed were unreasonable to the extent that the charges for the transportation from Cincinnati to Atlanta exceeded those that would have accrued at the sixth-class rate of 41 cents per 100 pounds contemporaneously in effect; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the basis herein found reasonable; and that it is entitled to reparation from the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, the Cincinnati, New Orleans & Texas Pacific Railway Company, and the Central of Georgia Railway Company in the sum of \$143.95, with interest, and from the Cincinnati, Hamilton & Dayton Railway Company, the Cincinnati, New Orleans & Texas Pacific Railway Company, and the Central of Georgia Railway Company in the sum of \$130.25, with interest.

An order awarding reparation will be entered, but as sixth-class rates have been applicable to cylinders in carloads from and to the points here in question for more than a year, no order for the future is necessary.



No. 8376.

FARMERS ELEVATOR & MERCANTILE COMPANY

v.

MISSOURI PACIFIC RAILWAY COMPANY ET AL.

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PORTION OF FOURTH SECTION APPLICATION No. 4220.

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*Submitted June 30, 1916. Decided October 6, 1917.*

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1. Rate on nut coal in carloads from Krebs, Okla., to Brown Spur, Kans., found unreasonable. Reparation awarded.
2. Fourth section relief denied.

*Rogers McCray* for complainant.

*Henry G. Herbel, Fred G. Wright, and C. S. Burg* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling coal at Brown Spur, Kans. By complaint, filed October 5, 1915, it alleges that the rate charged by defendants for the transportation of three carloads of nut coal from Krebs, Okla., to Brown Spur, in July, August, and September, 1914, was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section in that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Coffeyville, Kans. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in amounts per net ton.

Krebs is situated on the Missouri, Kansas & Texas and the Chicago, Rock Island & Pacific railways, in what is known as the McAlester, Okla., coal fields. Brown Spur is a local station on the Missouri Pacific Railway 6 miles west of Kingman, Kans. The shipments were routed by the shipper "M. K. & T., % M. P. Ry.," and moved by way of the Missouri, Kansas & Texas to Coffeyville and the Missouri Pacific beyond, 389 miles. Charges were collected in the sum of \$291.33, based on the aggregate weight of 224,100 pounds and the applicable joint through rate of \$2.60. A rate of \$1 applied on nut coal from Krebs to Coffeyville and a rate of \$1.40 from Coffeyville to Brown Spur, making a combination of \$2.40. These rates to and from Coffeyville are still in effect.



Complainant shows that at the time of movement a combination rate of \$2.15 applied on nut coal, in carloads, from Krebs to Brown Spur by way of the Missouri, Kansas & Texas and the Atchison, Topeka & Santa Fe railways to Kingman and the Missouri Pacific beyond, composed of a rate of \$1.75 to Kingman and a rate of 40 cents beyond. The rate from Krebs to Kingman over defendants' lines was and is \$2.60. Complainant also cites interstate and intrastate rates on coal between points in the same general territory which are, distances considered, somewhat lower than the rate assailed.

Defendants deny that the rate charged was or is unreasonable. They show that the rate charged was and is in line with the rate from Krebs to other local stations on the Missouri Pacific in the vicinity of Brown Spur.

We find that the rate assailed was unreasonable to the extent that it exceeded \$2.40 per net ton; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$22.41, with interest. The allegations of unjust discrimination and undue prejudice have not been sustained.

That portion of Missouri Pacific Railway Fourth Section Application No. 4220 wherein authority is sought to continue to charge for the transportation of nut coal from Krebs to Brown Spur, greater compensation as a through route than the aggregate of intermediate rates to and from Coffeyville, Kans., or other intermediate points, was heard with this case. The application will be denied to the extent that it is involved.

Appropriate orders will be entered.

47 I. C. C.

No. 8334.

BARRETT MANUFACTURING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted May 18, 1916. Decided October 9, 1917.*

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Carload rates of 38 cents per 100 pounds on coal tar, in barrels, or in tank cars, between Utah common points and Colorado common points, and on coal-tar pitch, in barrels, from Utah common points to Colorado common points, found to be unreasonable. Rates of 30 cents per 100 pounds prescribed as reasonable maximum rates for the future.

*J. L. Roberts* and *W. B. Harris* for complainant.

*E. N. Clark* and *J. G. McMurry* for Denver & Rio Grande Railroad Company.

*H. A. Scandrett* for Union Pacific Railroad Company.

*H. J. Wolff* for Denver & Rio Grande Railroad Company, Union Pacific Railroad Company, and Oregon Short Line Railroad Company.

*Frueauff, Robinson & Sloan* and *Watson B. Robinson* for intervenor.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, now the Barrett Company, is a corporation engaged in the manufacture of coal-tar products, with its principal office at New York, N. Y., and a plant at Salt Lake City, Utah. By complaint, filed September 16, 1915, as amended, it alleges that defendants' carload rates of 38 cents per 100 pounds on coal tar, in barrels, or in tank cars, between Utah common points and Colorado common points, and on coal-tar pitch, in barrels, from Utah common points to Colorado common points, are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceed rates of 22.5 cents per 100 pounds maintained prior to September 15, 1915. The establishment of reasonable and nondiscriminatory rates is asked. The Denver Gas & Electric Light Company, a corporation engaged in the manufacture of coal tar and its products at Denver, Colo., intervened at the hearing in opposition to a reduction of the present rates. The defendants principally interested in the rates in issue are the Denver & Rio Grande Railroad Company, hereinafter

called the Rio Grande, and the Union Pacific Railroad Company, and the latter's connection, the Oregon Short Line Railroad Company. Rates are stated in cents per 100 pounds.

Coal tar is a by-product of coal and is obtained in the manufacture of illuminating gas. Coal-tar pitch is the distillate or solid form of tar which remains after certain oils have been extracted by a refining process. These products are used in the manufacture of roofing and building papers, in the construction of sidewalks, and for other purposes. The value of tar is from \$4 to \$6 per ton at Salt Lake City and Denver. In refining a ton of tar about three-fourths of a ton of pitch, valued at \$7.50, is produced, and about \$5 worth of distillate oils. Complainant purchases some of its tar locally at Salt Lake City, and the remainder at Colorado Springs and other Colorado common points, most of its shipments of tar moving in tank cars. It ships pitch to various Colorado common points, including Denver.

Coal tar and pitch, in barrels, in carloads, minimum 40,000 pounds, and coal tar in tank-car loads, minimum the capacity of the tank, are rated class D in the western classification. When complainant entered the Utah-Colorado market about the middle of August, 1914, class D rates of 88 cents applied on coal tar between Utah and Colorado common points and on pitch from Utah to Colorado common points. On May 1, 1915, at complainant's request, defendants established carload commodity rates of 22.5 cents on tar, in barrels or in tank cars, from Colorado common points to Utah common points and on pitch, in barrels, in the opposite direction. On June 24, 1915, the same rate was established on tar, in barrels or in tank cars, from Utah common points to Colorado common points. Minima equal to those applicable in connection with the class rates applied in connection with the commodity rates so established. On September 15, 1915, the commodity rates were canceled, and the class rates of 38 cents have since applied. As the present rates represent increases since January 1, 1910, the burden is on defendants to show that they are just and reasonable.

Defendants insist that the 22.5-cent commodity rates were canceled because they were unremunerative. The average loading of 25 carloads of tar and pitch in barrels shipped by complainant from Salt Lake City to various Colorado common points during the period from June 1 to September 14, 1915, inclusive, was 42,982 pounds. According to figures submitted by defendants, the average haul over the routes of movement was 694 miles, and the average short-line distance between the same points was 647 miles. Based on the above loading and average short-line distance, the rates assailed yielded 11.75 mills per ton-mile and 25.2 cents per car-mile, and the rates

sought would have yielded 6.96 mills per ton-mile and 14.9 cents per car-mile. During the same period complainant shipped five tank-car loads of tar from Colorado Springs to Salt Lake City by way of the Rio Grande, 671 miles. Based on 98,360 pounds, the average weight of these shipments, the commodity rate charged yielded 6.7 mills per ton-mile and 32.98 cents per car-mile, while the present rate of 38 cents yields 11.3 mills per ton-mile and 55.7 cents per car-mile.

The following table, compiled from an exhibit filed by complainant, shows for the year ended June 30, 1915, the average haul and the average ton-mile and car-mile earnings of the Oregon Short Line, the Union Pacific, and the Rio Grande on all carload traffic:

	Ton-mile earnings.	Car-mile earnings.	Average haul.
	<i>Mills.</i>	<i>Cents.</i>	<i>Miles.</i>
Oregon Short Line.....	9.23	19.903	271.94
Union Pacific.....	9.45	15.456	359.67
Rio Grande.....	11.86	24.036	132.80
Average.....	10.18	19.796	254.90

Defendants urge that the empty haul of the tank cars must be considered in connection with the earnings on tar in tank-car loads. They show that 10 out of 12 tank-car loads of tar shipped by complainant from Colorado Springs during the period from December 21, 1914, to September 11, 1915, inclusive, involved an empty haul in the opposite direction, and that the average weight of the empty tank cars was 40,000 pounds. The same situation does not exist, however, with respect to tar and pitch, in barrels, which move in box cars to commercial centers, nor is it contended that a higher carload rate should apply on tar when shipped in tank cars than when shipped in barrels in box cars.

Complainant shows that, among others, the following low-grade commodities, rated in the western classification the same as or higher than coal tar and pitch, take carload commodity rates considerably lower than the class rates:

Commodity.	Rating.	Class rates.	Commodity rates.	Application.
		<i>Cents.</i>	<i>Cents.</i>	
Enameled brick.....	B	62	30	Colorado common points to Utah common points.
Do.....	B	80	46	
Tar and pitch.....	D	50	48	Missouri River points to Utah common points.
Cement.....	C	56	25	
Salt.....	O	56	22½	Utah common points to Colorado common points.

It also compares the 38-cent rate with a carload commodity rate of 35 cents, concurred in by defendants, on asphalt from Bakers-  
47 I. C. C.

field, Cal., to various Colorado points for distances of over 1,200 miles. Defendants urge that the rates cited are largely influenced by competitive conditions or by the peculiar circumstances surrounding the movement of the traffic. A carload commodity rate of 30 cents on asphaltum applies by way of the Rio Grande to Denver from Colton, Utah, 645 miles, and from other near-by producing points. A carload commodity rate of 22.5 cents applies on coal tar from Colorado common points to Kansas City, Mo., and other Missouri River points, and a rate of 30 cents from St. Louis, Mo., to Colorado common points. Kansas City is about 640 miles from Denver by way of the Union Pacific and St. Louis is about 916 miles from Denver. From St. Louis and Kansas City to Colorado common points is a prairie haul, while between Utah and Colorado common points the Rocky Mountains are crossed and the adverse conditions result in higher operating expenses and warrant higher charges than would be justified for a prairie haul. These unfavorable operating conditions, while encountered to a greater or less extent by the Union Pacific, apply particularly to the Rio Grande. In determining what are reasonable rates between two points neither that railroad which can afford to handle traffic at the lowest rate nor that whose necessities might justify the highest rate should be exclusively considered, but rates must be established with reference to the whole situation. *City of Spokane v. N. P. Ry. Co.*, 15 I. C. C., 376, 394.

Prior to the time complainant entered the Utah-Colorado market there was apparently but little movement of coal tar and pitch between Colorado and Utah common points. Since that time there has been a substantial movement of this traffic between those points, and complainant states that as its business develops its tonnage will increase. Practically no risk of loss or damage is involved in the transportation of these commodities, and on the whole their movement affords the carriers a desirable business. Defendants state that it is customary to prescribe commodity rates between Colorado and Utah common points not less than 62½ per cent of the commodity rates on the same articles between Missouri River points and Utah common points, that being the division of the through rate which accrues to the carriers west of Colorado common points. This percentage applied to the 48-cent commodity rate on tar and pitch from Missouri River points to Utah common points would result in a rate of 30 cents between Colorado and Utah common points. For the average short-line distance, this rate would yield 9.3 mills per ton-mile and, based on the average weights given by complainant, the car-mile earnings on this traffic, when shipped in box cars, would be 19.9 cents.

It appears that the cancellation of the 22.5-cent commodity rates followed a complaint made to the Rio Grande by the intervener, the Denver Gas & Electric Light Company, which produces its own tar and ships it to various points in Colorado and adjoining states. It also sells pitch locally in Denver. It contends that the rates asked, if established, would be so low as to enable complainant to ship its products into Colorado and to interfere with intervener's established business in that territory. This is a condition upon which we may not predicate a finding with respect to the reasonableness of rates. Intervener further contends that to establish the rates of 22.5 cents asked by complainant would give an undue preference to complainant by enabling it to reach the intervener's market at rates the same as or lower than intervener is compelled to pay for shorter hauls from Denver. Obviously this affords no ground for a refusal to require the defendants to maintain just and reasonable rates from and to the points in question.

We find that the rates assailed are, and for the future will be, unreasonable to the extent that they exceed and may exceed 30 cents per 100 pounds. The record affords no basis for a finding that the present rates are unjustly discriminatory or unduly prejudicial.

An appropriate order will be entered.

47 L. C. C.

No. 9240.  
F. S. DEWEY  
v.  
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY  
COMPANY.

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*Submitted March 28, 1917. Decided October 6, 1917.*

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Carload rates on timothy seed and flaxseed from Mott, N. Dak., to Minneapolis, Minn., not shown to have been unreasonable. Shipment found to have been overcharged and reparation awarded.

*Fred S. Dewey* for complainant.

*Thomas W. Proctor* for defendant.

REPORT OF THE COMMISSION.

**BY THE COMMISSION :**

Complainant is a resident of Mott, N. Dak. By complaint, filed October 6, 1916, he alleges that the charges collected by defendant on a mixed carload of timothy seed and flaxseed, shipped December 9, 1915, from Mott to Minneapolis, Minn., were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment consisted of 24,470 pounds of timothy seed in sacks, and 11,495 pounds of flaxseed in sacks. It moved over defendant's line and charges were ultimately collected thereon in the sum of \$250.76. No rate applied from and to the points in question on timothy seed and flaxseed in mixed carloads. The rate applicable on the timothy seed was the class A rate of 56 cents, minimum 30,000 pounds, governed by the western classification. The rate applicable on the flaxseed was a commodity rate of 19 cents, minimum 24,000 pounds. The correct charges were \$213.60, so that the shipment was overcharged \$37.16.

Prior to the movement defendant's agent at Mott quoted complainant a rate of 19 cents on the shipment, apparently upon the assumption that the commodity rate on flaxseed also applied on flaxseed and timothy seed in mixed carloads. Complainant offered no evidence in support of the allegation of unreasonableness, his sole contention being that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at the rate of 19 cents quoted by defendant's agent. We have repeatedly held that the misquotation of a rate by a carrier's agent is not a basis for the assess-



ment of a lower charge than that applicable under the published tariffs, or for an award of reparation.

We find that the rates applicable are not shown to have been unreasonable but that the charges collected were illegal to the extent that they exceeded \$213.60; that complainant made the shipment as described, and paid and bore the charges thereon in excess of the legal rate; that it has been damaged in the sum of \$37.16, and is entitled to reparation in that amount, with interest.

An appropriate order will be entered.

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No. 9113.

J. J. NEWMAN LUMBER COMPANY

v.

NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY  
ET AL.

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*Submitted March 6, 1917. Decided October 6, 1917.*

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Demurrage charges at New Orleans, La., on 11 carloads of lumber, shipped from Hattiesburg and Sumrall, Miss., to New Orleans for export found to have been unlawfully assessed. Reparation awarded.

*S. E. Travis* for complainant.

*Frank W. Gwathmey* for New Orleans & Northeastern Railroad Company.

*G. B. Auburtin* for New Orleans Great Northern Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of pine lumber at Hattiesburg and Sumrall, Miss. By complaint, filed July 19, 1916, it alleges that the demurrage charges collected by defendants on 11 carloads of lumber shipped in July, 1914, from Hattiesburg and Sumrall to New Orleans, La., for export, were unlawful and unreasonable to the extent that 10 days' free time was not allowed, as provided in the tariffs for export shipments. Reparation is asked.

Complainant shipped three cars from Sumrall over the Mississippi Central and New Orleans & Northeastern railroads and eight cars



from Hattiesburg over the Mississippi Central and the New Orleans Great Northern Railroad to New Orleans, the bills of lading carrying specific notations that the shipments were for export to certain designated points in Europe. The waybills of the New Orleans Great Northern, which were the only ones put in evidence, carried similar notations. The lumber was manufactured and shipped in accordance with a contract made in the spring of 1914 for delivery in foreign countries. It arrived at the Press street station in New Orleans, which is used jointly by these carriers, during the period from July 28 to August 1, 1914, and was held on cars on the tracks of these carriers until August 20, 1914. Arrangements had been previously made for the ocean transportation, but upon the outbreak of the European war the sailing dates were canceled. On account of the congestion of traffic, complainant's agents were unable to secure definite information from the New Orleans dock board as to storage charges in the terminal warehouses. In order to avoid further demurrage and other expenses, complainant's agents rented a property known as Simms' barn, and the cars were switched by the belt line of the New Orleans Terminal Company to the barn August 20, 1914, and the lumber was unloaded and stored at shipper's expense. The inbound switching charges were absorbed by the carriers having the line haul. The lumber from each car was stacked in separate stalls and kept intact. Later, vessel space was engaged and the separate car lots were reloaded, switched at shipper's expense for delivery to ocean carriers, and exported to various destinations in Europe, the destinations of four of the shipments having in the meantime been changed from those shown on the rail bills of lading. Although complainant's representative did not personally attend to the unloading and reloading of the lumber at the barn, the identity of the shipments was preserved by means of marks and lot numbers.

The inbound carriers collected demurrage charges from complainant for the detention upon their rails on the basis of 24 hours' free time applicable to domestic shipments held for switching orders and agreed to refund a portion of those charges on a basis of 10 days' free time allowed on export shipments upon proof that the lumber was exported. Complainant's agents offered for defendants' inspection the ocean bills of lading describing the shipments by the marks and number of pieces of lumber comprising these 11 carloads to prove that the identical shipments had been exported, and demanded refund on basis of 10 days' free time for each car in view of the fact that they remained on the tracks of the inbound carriers for approximately 20 days. This was refused.

The sole issue is, did the shipments maintain their status as in foreign commerce during the period of detention. If we find that

they did, the defendants express a willingness to make refund on the basis of \$9 per car.

At the time of movement defendants' demurrage tariffs provided an allowance at New Orleans of 10 days' free time on cars containing freight for export and coastwise movement loaded at points beyond the switching limits of New Orleans. This allowance, which was not restricted to shipments delivered at ship side, applied

only to cars while on tracks of the road by which shipment is transported to port of export and do not apply after such cars are switched to a track on another line.

Defendants contend that when the shipments were taken out of the possession of the carriers and transferred to the Simms' barn at complainant's risk and responsibility the character of the shipments was changed and the demurrage rules pertaining to domestic traffic were legally applicable.

We find that the shipments were for export, and that the demurrage charges were therefore unlawfully assessed. We further find that complainant made the shipments as described and paid and bore the charges herein found unlawful; and that it is entitled to reparation from the New Orleans & Northeastern Railroad Company in the sum of \$27, with interest, and from the New Orleans Great Northern Railroad Company in the sum of \$72, with interest.

An order will be entered accordingly.

47 L. C. C.

No. 9223.  
W. N. MATTHEWS & BROTHER  
v.  
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY  
ET AL.

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*Submitted May 28, 1917. Decided October 12, 1917.*

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Double first-class rating in the official and western classifications on incandescent lamp guards, not nested, not shown to be unreasonable. Complaint dismissed.

*C. H. Rodehaver* for complainant.

*Clarence B. Cardy* and *A. L. Viles* for official classification lines.

*R. C. Fyfe* for western classification lines.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture, buying, and selling of electrical appliances at St. Louis, Mo. By complaint, filed August 28, 1916, it alleges that the double first-class rating prescribed by the official and western classifications on wire incandescent lamp guards, not nested, in barrels, boxes, or crates, in less than carloads, is unreasonable. The establishment of a rating not in excess of first class is asked.

Complainant's incandescent lamp guards consist of a wire frame having at its top a split collar for securing the guard to the lamp socket. From this collar spaced wires flare downwardly to a large central wire ring beyond which they taper inwardly to a slightly smaller wire ring which forms the bottom of the guard. Hinged to the bottom ring is a triangular wire member, termed a "trap," for the protection of the inclosed bulb from breakage and theft. Attached to and concentric with the central ring is a coil spring which fits around and resiliently supports the bulb. The guards are apparently made in five different sizes, the smallest of 17, 14, and 12 gauge wire and the remainder of 14-gauge wire. They are packed a dozen or two in a carton and eight or ten dozen in a case. The 17-gauge wire guards, one of which was submitted as an exhibit, have a shipping weight of 5½ pounds per cubic foot and an average value of \$2.53 per cubic foot. The shipping weight or value per cubic foot of the other guards was not shown. The average weight

of complainant's shipments over a period of three months was given as 200 pounds.

Both the western and official classifications provide:

Guards, incandescent lamp, wire:	Class.
Not nested, in barrels, boxes or crates.....	D 1
Nested, in barrels, boxes or crates.....	1

The term "nested," used in the package specifications in these classifications, means that three or more of the articles must be placed one within the other so that each upper article will not project above the next lower one more than one-third of its height, or as more commonly expressed means nested 66⅔ per cent. When packed for shipment the guards nest slightly under 50 per cent. Complainant contends that it is unreasonable to rate its guards double first class while articles which nest in accordance with the rules of the classifications are given a rating of first class. For the purpose of comparison it submitted a long list of items which the classifications rate one and one-half times first class, first class, and lower. It is argued that these guards compare favorably with those rated first class. No evidence was introduced to show the loading weight or value of any of these articles, nor was it shown that any of them, only one of which appears to be analogous to complainant's commodity, competes with it.

For defendants it was testified that prior to July 1, 1914, there was no specific designation in the official classification for these lamp guards, but that they were rated double first class under the item: "Wire goods, n. o. s." When the specific designation for lamp guards was first inserted in this classification no distinction was made between nested and nonnested guards, but effective April 1, 1915, upon application of a shipper who made a type of guard which nested and weighed considerably more than the nonnesting types, the item was changed to read:

Guards, incandescent lamp, wire:	Class.
Nested solid, in barrels, boxes or crates.....	1
N. o. s., in barrels, boxes or crates.....	D 1

On January 1, 1916, it was again amended to read as at the present time. In *Classification Nesting Rule*, 37 I. C. C., 477, we approved the nesting rule now carried in the official, western, and southern classifications.

It is the contention of the defendants that with an article such as this, which is extremely light, the weight is the dominant factor in considering the rating, and that unless the nesting of a commodity is productive of a substantial increase in the loading the classification should not give consideration to the fact that it is nested. It was testified that even though complainant's guard does

nest to a certain extent, its weight per cubic foot is very much lighter than that of many other articles not nested which are rated double first class.

Defendants submitted nonnesting incandescent lamp guards, one of which is stated to weigh, when packed, from 5.7 pounds to 7.5 pounds per cubic foot, and another which packs approximately 10 pounds per cubic foot. Of the nesting types of guards, the defendants submitted one used for the protection of light clusters, which, it was testified, packs about 12 pounds per cubic foot and is the lightest of that variety. Another exhibit, consisting of a carton of one dozen nested guards, and said to be a very good sample of the nesting variety, packs 33 pounds per cubic foot.

We find that the rating assailed is not shown to be unreasonable. An order dismissing the complaint will be entered.

47 I. C. C.

No. 7153.<sup>1</sup>

NEBRASKA BRIDGE SUPPLY & LUMBER COMPANY  
v.  
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY  
ET AL.

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*Submitted March 30, 1916. Decided October 9, 1917.*

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On rehearing, rates on low-grade cedar logs in carloads from certain points in Alabama, Tennessee, and Georgia, to Atlanta, Ga., found to have been unreasonable, and reparation awarded.

*E. J. McVann* for complainant.  
*R. Walton Moore* for defendants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In our original reports we found in No. 7153 that defendants' rates on low-grade cedar logs in carloads from points in Alabama and Tennessee on the Nashville, Chattanooga & St. Louis Railway and in No. 7018 from points in Alabama, Georgia, and Tennessee on the Alabama Great Southern, to Atlanta, Ga., were not shown to be unduly prejudicial but were, and for the future would be, unreasonable to the extent that they exceeded the rates contemporaneously applicable on common logs in carloads from and to the same points. 35 I. C. C., 86, 90.

We denied reparation in No. 7153, saying:

Defendant's rates on cedar logs originally were published for the movement of high-grade cedar and are not questioned in their application to high-grade cedar logs. The gradual disappearance of high-grade cedar and the establishment of pencil slat factories in the territory involved created a market for low-grade cedar logs for manufacture into pencil wood. Under these circumstances we find that reparation should not be awarded on shipments of low-grade cedar logs which moved prior to our finding herein.

In No. 7018, following our decision in No. 7153, we also denied reparation, except in certain instances in which the joint rates charged exceeded the aggregate of the intermediate rates. Upon petition filed by complainant both cases were reopened for argument upon briefs. Rates are stated in cents per 100 pounds.

Complainant points out that at the time the shipments comprised in No. 7153 moved the rates applicable from the same points of

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<sup>1</sup> This report also embraces No. 7018, Nebraska Bridge Supply & Lumber Company v. Alabama Great Southern Railroad Company et al.

origin on the Nashville, Chattanooga & St. Louis to Atlanta on cedar logs and lumber ranged from 14 cents to 17.5 cents; on common logs from 8 cents to 10 cents; and that defendant Nashville, Chattanooga & St. Louis maintained between points on its line a much lower basis of rates on low-grade cedar logs than applied on complainant's shipments to Atlanta. The record in No. 7158 shows that virtually all high-grade cedar had disappeared from the territory of origin on the Nashville, Chattanooga & St. Louis some time prior to the movement of complainant's shipments; that complainant had never handled any high-grade cedar logs, and that none were included in the shipments upon which reparation is asked. In No. 7018 it was shown that high-grade cedar has never been produced along the line of the Alabama Great Southern, and that the rates assailed were established in 1911 for the purpose of covering the low-grade cedar log movement.

During the period from June 24, 1911, to February 25, 1913, both dates inclusive, complainant made 31 shipments of low-grade cedar logs from Burrows Switch, Guntersville, Stevenson, Huntsville, Bridgeport, and Montague (Mount Carmel), Ala., and Belvidere and Jasper, Tenn., to Atlanta, on which it paid charges at the rates legally applicable. Claims on all these shipments were presented to the Commission informally within the statutory period. Two other shipments were also made to Atlanta, one on June 14, 1911, from Guntersville and the other on June 15, 1911, from Bridgeport, but claims covering these shipments were not filed with the Commission within the statutory period and they are therefore barred by the statute of limitations. During the period from June 14, 1911, to April 8, 1914, both dates inclusive, complainant made 34 shipments of low-grade cedar logs from Wauhatchie, Tenn., New England, Sulphur Springs, and Rising Fawn, Ga., and Keener, Portersville, Collinsville, and Argo, Ala., to Atlanta on which it paid charges at the rates legally applicable. The shipments from Georgia points moved to Atlanta by an interstate route. Claims on all these shipments were presented to the Commission informally within the statutory period.

Upon further consideration of the facts of record we are of opinion and find that the rates charged on the shipments were unreasonable to the extent that they exceeded the rates contemporaneously in effect from and to the same points on common logs; that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued on basis of our conclusions herein; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined upon the present records, and complainant



should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to defendants for verification. Upon receipt of statements so prepared and verified, we will consider the entry of an order awarding reparation.

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INVESTIGATION AND SUSPENSION DOCKET No. 1006.  
MILWAUKEE SWITCHING ABSORPTION.

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*Submitted May 17, 1917. Decided October 9, 1917.*

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Absorption by the Pere Marquette Railroad of intermediate switching charges at Milwaukee, Wis., on bituminous coal in carloads moving to Milwaukee over its line and destined to points beyond over the Chicago & North Western Railway, found to have been without tariff authority. Orders of suspension vacated.

*F. B. Brown* for respondent and its receivers.

*Arthur R. Barry* for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedule, filed to take effect January 20, 1917, the Pere Marquette Railroad Company, hereinafter termed respondent, announced that it would not absorb the intermediate switching charge of the Chicago, Milwaukee & St. Paul Railway Company at Milwaukee, Wis., on bituminous coal in carloads moving into Milwaukee over respondent's car-ferry route destined to points beyond over the Chicago & North Western Railway. Upon protest by S. H. Benjamin Coal Company, the schedule was suspended until November 20, 1917.

For some years this switching charge has been absorbed by respondent, but, as a check of the tariffs discloses, without tariff authority therefor; and the suspended schedule proposes only that which should have been and should be done under the existing tariffs. The schedule under suspension would, therefore, effect no change in the legal rates, and an order will be entered vacating the orders of suspension.



No. 8919.  
HENRY F. KATH COMPANY, INCORPORATED,  
*v.*  
ALABAMA, TENNESSEE & NORTHERN RAILWAY ET AL.  

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PORTION OF FOURTH SECTION APPLICATION No. 2138.  

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*Submitted September 29, 1916. Decided October 12, 1917.*

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1. Charges on three carloads of mussel shells from Cochrane, Ala., to Muscatine, Iowa, found to have been unreasonable. Reparation awarded.
2. Fourth section relief denied.

*Henry F. Kath* for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling mussel shells at Muscatine, Iowa. By complaint, filed June 3, 1916, it alleges that the rate of 40.9 cents per 100 pounds charged by defendants for the transportation of three carloads of mussel shells, two of which were shipped in November, 1913, and one in January, 1914, from Cochrane, Ala., to Muscatine was unreasonable to the extent that it exceeded 27 cents and unduly prejudicial as compared with rates from other points in Alabama and Mississippi. Reparation is asked. The claim was first presented to the Commission informally June 18, 1915. That portion of Mobile & Ohio Railroad Fourth Section Application No. 2138 wherein authority is sought to continue to charge for the transportation of mussel shells from Cochrane to Muscatine rates which are lower than the rates contemporaneously maintained on like traffic from or to intermediate points, was set for hearing with the complaint. Rates are stated in cents per 100 pounds.

The shipments were unrouted and moved over the Alabama, Tennessee & Northern Railway to Reform, Ala., and the Mobile & Ohio to East St. Louis, Ill. The first shipment, weighing 85,300 pounds, moved beyond East St. Louis over the Chicago & Alton Railroad to Pekin, Ill., from which point it was switched by the Peoria Railway Terminal Company to Iowa Junction, Ill., and moved thence over the Minneapolis & St. Louis Railroad to Elrick Junction, Iowa, and the Muscatine, North & South Railway, now the Muscatine, Burlington

& Southern Railroad, to destination. As stated a rate of 40.9 cents was charged on this shipment. The rate legally applicable was 54 cents, composed of a class A rate of 32 cents to Columbus, Miss., governed by the southern classification, and a commodity rate of 22 cents beyond. There is therefore an outstanding undercharge on this shipment. The other two shipments, aggregating 122,500 pounds, moved beyond East St. Louis over the Chicago, Peoria & St. Louis Railroad to Peoria, Ill., Minneapolis & St. Louis to Elrick Junction, and Muscatine, North & South to destination. The Southern Railway, while named as defendant, does not appear to have participated in the movement of any of the shipments. Charges were also collected on these two shipments at the 40.9-cent rate. The rate legally applicable was 62.9 cents, made up of a class A rate of 54 cents to East St. Louis and the tenth-class rate of 8.9 cents beyond, governed by the Illinois classification, so that these shipments were also undercharged.

At the time the shipments moved a 22-cent rate applied on mussel shells to Muscatine from Demopolis, Ala., and Aberdeen and Columbus, Miss., points of origin in the same general territory as Cochrane. Effective August 22, 1914, a joint carload commodity rate of 27 cents was established on mussel shells from Cochrane to Muscatine. This rate applies over the route of movement to East St. Louis, and thence over the lines of various carriers, including the Chicago & Alton, to Muscatine. Complainant is satisfied with the present rate, and the only question for determination is that of reparation.

An examination of the tariffs on file with this Commission discloses that the Chicago, Peoria & St. Louis has not filed its concurrence to the tariff naming the 27-cent rate, notwithstanding the fact that it joined with other defendants in applications on our special docket asking for authority to make refund to the basis of the 27-cent rate. Our order will require establishment of this rate via this route.

The distance from Cochrane to Muscatine over the routes of movement is approximately 810 miles. Based on the average weight of the shipments, 69,267 pounds, the 40.9-cent rate yielded a ton-mile revenue of approximately 10.1 mills and an average car-mile revenue of 35 cents, while the earnings under the rates legally applicable would have been greater. The 27-cent rate now in effect yields a ton-mile revenue of approximately 6.7 mills and, based on the same average weight mentioned, a car-mile revenue of 23.1 cents.

Defendants were not represented at the hearing, and no justification was offered in support of the fourth section application. It will therefore be denied to the extent that it is here involved.

We find that the rates legally applicable on the shipments in question were unreasonable to the extent that they exceeded 27 cents per

100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$288.84, with interest. The collection of the undercharges referred to may be waived. The Chicago & Alton Railroad Company participated in the movement of one of these shipments. It was not named as a defendant, but it may participate in the reparation awarded. Appropriate orders will be entered.

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No. 8355.<sup>1</sup>

CROWN WILLAMETTE PAPER COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

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PORTIONS OF FOURTH SECTION APPLICATIONS Nos.  
349, 703, 1296, 1530, 1548, AND 2045.

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*Submitted December 5, 1916. Decided October 9, 1917.*

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On complaints attacking the rate applied from Jacksonville, Fla., to Sanford, Fla., on unprinted fruit wrapping paper in carloads from Camas, Wash., and Floriston, Cal., and various rates applied from Floriston to Jacksonville on the same traffic, destined to Sanford, *Held:*

1. Component from Jacksonville to Sanford not shown to have been or to be unreasonable or unduly prejudicial.
2. Components from Floriston to Jacksonville found to have been unreasonable to the extent that they exceeded 88.5 cents per 100 pounds.
3. Reparation awarded.
4. Fourth section relief denied.

*John J. Seid* for complainant.

*Geo. D. Squires, R. Walton Moore, and Edwin C. Blanchard* for defendants.

#### REPORT OF THE COMMISSION.

#### BY THE COMMISSION:

These cases which are related were consolidated and will be disposed of in one report. Complainant is a corporation engaged in manufacturing paper products, with its principal office at San

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<sup>1</sup> The report also embraces No. 9078, Same v. Southern Pacific Company et al.

Francisco, Cal. It alleges in No. 8355, filed August 5, 1915, that the rate applied from Jacksonville, Fla., to Sanford, Fla., on fruit wrapping paper, unprinted, in carloads, from Camas, Wash., and Floriston, Cal., and in No. 9073, filed July 3, 1916, as amended, that various rates applied from Floriston to Jacksonville on the same traffic, destined to Sanford, were and are unreasonable and unduly prejudicial. In No. 8355 reparation is asked on 58 shipments delivered within two years prior to the filing date of the complaint; in No. 9073, on 20 shipments which moved during the period from January 27 to August 19, 1914, inclusive. Reasonable and nonprejudicial rates for the future are asked. Claims covering the shipments upon which reparation is asked in No. 9073 were presented to the Commission informally March 3, 1915. Rates are stated in amounts per 100 pounds.

There were and are no joint through rates on unprinted wrapping paper in carloads from Camas and Floriston to Sanford. Charges were collected on the shipments from Floriston at combination rates ranging from \$1.115 to \$2.26, made up of the local rate of 10.5 cents to Sacramento, Cal., and varying combinations of class or commodity rates thence to Jacksonville based on Mississippi and Ohio river crossings or Virginia cities. Charges were collected on the shipments from Camas at a combination rate of \$1.18, based on Jacksonville. The component applied from Jacksonville to Sanford was 16 cents in each instance. The record fails to show the routes over which the shipments moved, so that it is impossible to verify the rates charged. On October 12, 1914, the component from Floriston to Jacksonville was reduced to 92.5 cents, composed of 10.5 cents to Sacramento and 82 cents thence to Jacksonville, and on March 22, 1915, the rate from Sacramento to Jacksonville was further reduced to 78 cents, thus making the rate from Floriston to Jacksonville 88.5 cents. On November 20, 1915, following the elimination of Sacramento as a California terminal, the 88.5-cent rate was made applicable by way of other California terminals.

At the present time a combination rate of \$1.045 also applies over various routes from Floriston to Sanford, composed of 10.5 cents to San Francisco, 78 cents to Jacksonville, and 16 cents beyond, and a combination rate of 97.5 cents over certain routes from Camas, composed of 81.5 cents to Jacksonville and 16 cents beyond. The component from Camas to Jacksonville is not attacked.

Defendants state that they proposed to publish the present rate from Floriston prior to the time the shipments moved, and that their failure to do so was due to a dispute as to divisions.

We find that the components applied on the shipments from Floriston to Jacksonville were unreasonable to the extent that they exceeded 88.5 cents per 100 pounds subsequently established.

The rate on unprinted fruit wrapping paper in carloads from Jacksonville to Palatka, Fla., on shipments originating at Pacific coast points, is 3 cents. Complainant contends that the 16-cent component from Jacksonville to Sanford is unreasonable to the extent that it exceeds 8 cents, and that the existing adjustment is unduly prejudicial to Sanford and unduly preferential of Palatka. The defense was assumed by the Atlantic Coast Line Railroad, hereinafter called defendant.

Sanford is a local point on defendant's line. Palatka is served by defendant and also by the Florida East Coast and the Georgia Southern & Florida railways. Both towns are located on the St. Johns River, which is navigable from Jacksonville to points beyond Sanford between which points several regular line steamers ply. Sanford is 124 miles from Jacksonville by rail and 170 miles by water; Palatka is 55 miles from Jacksonville by way of defendant's line, 65 miles by way of the Florida East Coast, and 60 miles by water.

The southern classification, which governs, rates unprinted wrapping paper in carloads, minimum 30,000 pounds, class A. The class A rate from Jacksonville to Sanford is 16 cents. This rate applies on local traffic and also on all traffic originating beyond Jacksonville. The local class A rate from Jacksonville to Palatka is 10 cents. From Jacksonville to Palatka a basing rate of 4 cents is maintained on commodities rated class A when originating at western points, and of 10 cents when originating at eastern points. By exceptions to the classification, or by publication of commodity basing rates, a rate of 3 cents, minimum 24,000 pounds, applies from Jacksonville to Palatka on shipments of pineapple, tomato, and orange wrapping paper originating at western points and a rate of 7.5 cents on shipments originating at eastern points. The rate on wrapping paper from Jacksonville to Sanford is the same by water as by rail. The local class A rate by water from Jacksonville to Palatka is 10 cents, but on wrapping paper from points beyond the same rates apply by water as by rail.

Complainant contends that Sanford and Palatka are subject to the same water competition; that the physical transportation conditions from Jacksonville to Palatka and to Sanford are similar, and urges that it is unjustly discriminatory for defendant to maintain the full local rate on the commodity in question from Jacksonville to Sanford while contemporaneously maintaining a lower basis from Jacksonville to Palatka. Comparisons are made with the local rates and interstate proportional rates applicable on fruit wrapping paper from San Francisco to Sacramento and Stockton, Cal., and from Portland, Oreg., to Albany, Corvallis, and Astoria, Oreg. Compari-

sons also are made between the ton-mile revenue yielded by the Jacksonville-Sanford component of the rate in issue and the average ton-mile revenues of carriers, including defendant, operating in Florida, and of carriers operating in California. We have often had occasion to comment upon the limited value of the ton-mile test. Complainant observes that, under exceptions to the classification, carriers apply the class B rating on this traffic in Georgia.

Defendant states that local or proportional rates from Jacksonville to Florida points are based on the distance scale of rates prescribed by the Florida Railroad Commission, except where water or short-line competition necessitates a departure therefrom. If this distance basis were applied, defendant's rate from Jacksonville on commodities rated class A would be 16 cents to Palatka and 23 cents to Sanford. When the Jacksonville, Tampa & Key West Railroad, now a part of defendant's system, was built in 1882, it adopted from Jacksonville the class A rates of 10 cents to Palatka and 16 cents to Sanford, rates then maintained by boat lines. In 1896 the Georgia Southern & Florida extended its line to Palatka. It had no line into Jacksonville and proposed the extension of the Jacksonville rates to Palatka so as to make the latter a gateway in competition with Jacksonville. Other roads objected and the matter was arbitrated, resulting in the application of rates from western points to Palatka certain class arbitraries over the rates to Jacksonville, the class A arbitrary being 4 cents. Defendant was compelled to meet this rate or surrender the traffic to the Georgia Southern & Florida. In 1905 the Florida East Coast, in order to meet water competition at Palatka, made an exception to the class A rating on fruit wrapping paper and established on this commodity a rate of three-quarters of class A, which resulted in a basing rate of 3 cents from Jacksonville to Palatka on western traffic and 7.5 cents on eastern traffic. Subsequently defendant met these reductions by the establishment of commodity basing rates.

The record shows that the 16-cent rate from Jacksonville to Sanford is a water competitive rate which has been in effect for more than 30 years. It is lower than the proportional rates from Jacksonville to other Florida points for equal or shorter distances. For example, the rate on fruit wrapping paper from Jacksonville to Gainesville, Fla., 70 miles, is 17 cents; and to Dunnellon, Fla., 125 miles, and to Juliette, Fla., 126 miles, 23 cents.

We find that the component from Jacksonville to Sanford is not shown to have been or to be unreasonable or unduly prejudicial. We further find that complainant made the shipments from Floriston to Sanford as described; that it paid and bore the charges thereon and was damaged to the extent of the difference between the charges



paid and those that would have accrued at the basis herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments upon which reparation has been found due in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

Floriston is intermediate, San Francisco to Jacksonville, and the higher charge from Floriston to Jacksonville than from San Francisco contravenes the long-and-short-haul rule of the fourth section, and portions of various fourth section applications protecting the departure were heard with this case. Defendants offered no evidence to justify this departure, but submitted this feature of the case upon our action in a proceeding then pending presenting the same and similar fourth section departures. In that proceeding the carriers, subsequently to the hearing of these cases, stated that they would correct the fourth section departures with respect to traffic to Jacksonville. The fourth section applications will be denied to the extent that they are here involved.

As the component from Floriston to Jacksonville herein found reasonable has been in effect since March 22, 1915, no order for the future is necessary.

47 I. C. C.

No. 8996.  
**SWIFT & COMPANY**  
*v.*  
**UNION PACIFIC RAILROAD COMPANY ET AL.**

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*Submitted January 29, 1917. Decided October 12, 1917.*

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**Rate on packing-house products from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., to California terminal points not shown to have been unreasonable. Complaint dismissed.**

*R. D. Rynder* for complainant.

*L. T. Wilcox* and *R. C. Fyfe* for defendants.

*J. B. Coffey* for Atchison, Topeka & Santa Fe Railway Company.

*H. K. Crafts* for Armour & Company, Hammond Packing Company, and Fowler Packing Company, interveners.

*Luther M. Walter* for Morris & Company, intervener.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

Complainant is a corporation engaged in the packing-house business at Chicago, Ill. By complaint, filed June 7, 1916, it alleges that the rate charged by defendants on certain mixed carloads of packing-house products shipped from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., to California terminal points between September 8, 1913, and October 18, 1915, was unreasonable. Reparation is asked. Armour & Company, Hammond Packing Company, Fowler Packing Company, and Morris & Company, corporations engaged in the same business at various points, intervened, asking for reparation on various mixed carloads of packing-house products shipped from the same points to California terminals. Claims covering many of the shipments were presented to the Commission informally on various dates between September 9, 1915, and August 9, 1916, but in view of our finding herein it will be unnecessary to determine whether or not any of the shipments are barred. Rates are stated in amounts per 100 pounds unless otherwise specified.

The shipments consisted of mixtures of the following packing-house products: Cured meats, pickled meats, dry salted meats, smoked meats, lard, lard substitutes, canned meats, cooking oils, pigs' feet, cured sausage, sausage casings, pickled tongue, and pickled tripe, together with, in some instances, quantities of fresh meats.

The points of origin are located in transcontinental group F, from which a commodity rate of \$1.60, minimum 26,000 pounds, applied



on any mixture of the commodities mentioned, and this rate was assessed on the shipments in question. A similar commodity rate applied from group G, immediately west of group F. The western classification, which governs in this territory, rated and rates the packing-house products above named in straight carloads fifth class, minimum 30,000 pounds, except that canned meats are accorded a minimum of 36,000 pounds and pickled tripe are rated third class, any quantity. The contemporaneous fifth-class rates were \$1.60 from group F and \$1.50 from group G. The tariffs authorized the application of the class or commodity rates, whichever made the lower charges, and also, under our permission, the application of combinations of intermediate rates if they made lower charges than the through rates. The fifth-class rate from group G, although lower than the commodity rate, was limited to mixtures of articles named in one item, or bracketed items, in the classification.

Complainant and interveners, hereinafter called complainants, contend that the charges collected were unreasonable to the extent that they exceeded the charges which would have accrued at combination rates made up of the commodity or class rates or switching charges applicable on local shipments from the points of origin to certain points in group G near the eastern boundary thereof, viz, Elwood, Soldiers' Home, Armstrong, Turner, and Nearman, Kans., and Avery and Albright, Nebr., and the fifth-class rate of \$1.50, subject to a minimum carload weight of 26,000 pounds, beyond; that the minimum of 30,000 pounds was unreasonable because it exceeded the average maximum loading per car; and that the fifth-class rate should have been applicable to the same mixtures as those covered by the commodity rates. The following are illustrative of the local rates or charges from the points of origin to the group G points: South St. Joseph to Elwood, fifth-class rate of 3 cents; Kansas City to Armstrong, switching charge of \$5 per car; South Omaha to Avery, commodity rate of \$4 per car to Omaha plus the fifth-class rate of 1½ cents, minimum weight 40,000 pounds, beyond.

Complainants show that in western classification territory fifth class is the maximum for packing-house products in mixed car loads wherever there is an appreciable movement. In *1915 Western Rate Advance Case*, 35 I. C. C., 497, 590-591, we referred to the fact that the chairman of the western trunk line tariff committee had testified that if any of the proposed rates on packing-house products from the designated points exceeded fifth class, it was a mistake which would be corrected. It appears to be the general practice of carriers in western classification territory to provide for the application on a list of packing-house products, known as the uniform packing-house products list, in mixed car loads of the fifth-class rates or com-

modity rates not higher than fifth class, subject to a minimum of 26,000 pounds, from points originating an appreciable volume of traffic. The evidence indicates that there is no regular movement from the group G points referred to.

The claimed basis from South Omaha was compared with combination rates made up of a switching charge of \$9 per car from South Omaha to a group G point, not named, and special commodity rates published in the current transcontinental tariff from group G to intermediate points, namely, \$1.22 to Reno, Nev., and Phoenix, Nogales, Tempe, Mesa, Casaba, Maricopa, and Tucson, Ariz., and \$1.03 to Deming, N. Mex., and attention directed to the fact that the ton-mile and car-mile earnings under the rate to the terminal points are higher than under the rates to the intermediate points, although the distance is greater. The special commodity rates from group F to the points in Nevada and Arizona are \$1.33, and to these points the special commodity rates are the same as the respective fifth-class rates. To Deming the special commodity rate from group F is the same as from group G and the fifth-class rates from both groups are \$1.15. Had complainants used in this comparison the same group G basing point as in connection with the combination rate to the terminal points, the combination rates to the points in Arizona and Nevada would now be 11 cents higher because the basing point has been placed in group F. No showing was made of the circumstances and conditions governing traffic to the intermediate points and the comparison sheds little, if any, light upon the reasonableness of the rate attacked.

The record does not show definitely whether any of the shipments consisted of mixtures permitted by the classification at the carload rate. Upon such a restricted mixture the combination of intermediate rates would have been applicable if the charges thereunder were less than under the rate attacked, and in this connection the minimum weight becomes material. The evidence shows that the minimum of 30,000 pounds is not too high in so far as the physical loading is concerned. The official classification provides a minimum of 30,000 pounds, but it is the only other classification which specifies a minimum higher than 26,000 pounds. Complainants concede that the minimum is not too high in official classification territory, but they contend that on account of lesser density of population, longer hauls, and the absence of a stopping-in-transit rule in the western classification, it is impracticable to load to 30,000 pounds in that territory. Defendants submitted an exhibit showing all shipments of packing-house products in straight or mixed carloads made by complainants and by another packer, Wilson & Company, in October, 1916, from Kansas City, South St. Joseph, South Omaha, and Sioux

City. Of the total of 3,238 cars so shipped, 1,867 were loaded to 30,000 pounds or over, and only 202 were loaded 27,000 pounds or less.

The rate assailed has been in effect for 18 years or more. On October 18, 1915, the group G points referred to were placed in group F, thus increasing the fifth-class rate from those points to \$1.60 and eliminating the rate situation upon which complainants rely. Complainants do not question the reasonableness of the rate for the future, their purpose being merely to secure reparation.

We find that the rate and minimum weight attacked are not shown to have been unreasonable. An order dismissing the complaint will be entered.

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No. 8924.

J. L. KRUGER LUMBER COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY  
ET AL.

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*Submitted June 8, 1917. Decided October 12, 1917.*

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Carload of nut coal from Scammon, Kans., to Abilene, Kans., moving interstate, not shown to have been misrouted. Complaint dismissed.

*J. E. Crane* for complainant.

*R. R. Lethem* for St. Louis & San Francisco Railroad Company and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, J. L. Kruger, is engaged in the retail lumber and fuel business at Abilene, Kans., under the name of J. L. Kruger Lumber Company. By complaint, filed May 20, 1916, he alleges that, due to misrouting, he was subjected to the payment of unreasonable charges for the interstate transportation in November, 1912, of a carload of nut coal from Scammon, Kans., to Abilene. The claim was presented to the Commission informally October 26, 1914. Rates are stated in amounts per net ton.

The shipment weighed 93,600 pounds and moved over the St. Louis & San Francisco Railroad from Scammon to Kansas City, Mo., and thence to Abilene over the Chicago, Rock Island & Pacific Railway. There was no joint rate in effect over this route, and charges were

47 I. C. C.

collected in the sum of \$93.60 at a combination rate of \$2, composed of 65 cents to Kansas City and \$1.35 beyond. At the time the shipment moved defendants maintained a rate of \$1 on nut coal from Scammon to Abilene by way of Wichita, Kans., and it is the contention of the complainant that defendants misrouted the shipment in not so forwarding it.

Complainant offered in evidence a copy of a bill of lading, signed by the carrier's agent at Scammon, which shows Abilene as the destination. No routing is shown in this copy. Defendants' witness testified that the agent signed it some time after the shipment moved without checking it against his records. A copy submitted by defendants subsequent to the hearing pursuant to leave granted shows that the shipment was originally billed to Kansas City. The waybill indicates that the destination was changed from Kansas City to Abilene at Scammon. It contained instructions to route the shipment by way of Kansas City. The witness who appeared for complainant had no personal knowledge of the circumstances surrounding the shipment, nor was it established whether or not the routing was in compliance with the shipper's order.

We find that it is not shown that the shipment was misrouted, and the complaint will be dismissed. An appropriate order will be entered.

47 L. C. C.

No. 9038.

GEORGE E. COULBOURN ET AL.

v.

NEW YORK, PHILADELPHIA & NORFOLK RAILROAD  
COMPANY ET AL.

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PORTIONS OF FOURTH SECTION APPLICATIONS Nos.  
703, 928, 1074, 1548, 1561, 1573, AND 4578.

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• *Submitted January 16, 1917. Decided October 12, 1917.*

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1. Rate on lumber in carloads from stations on the New York, Philadelphia & Norfolk Railroad in Accomac and Northampton counties, Va., to Wilmington, Del., and Philadelphia, Pa., found to be unreasonable, and a reasonable maximum rate prescribed for the future.
2. Fourth section relief denied.

*Claude W. Owen and John R. Walker* for complainants.

*Frederick L. Ballard and Henry Wolf Bickl * for defendants.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

Complainants are individuals and copartnerships engaged in the lumber business, with sawmills in Accomac and Northampton counties, Va. By complaint, filed July 10, 1916, they allege that defendants' rate of 11.6 cents per 100 pounds on lumber in carloads, from stations on the New York, Philadelphia & Norfolk Railroad, hereinafter called defendant, in Accomac and Northampton counties, to Wilmington, Del., and Philadelphia, Pa., is unreasonable, unduly prejudicial, and in violation of the long-and-short-haul rule of the fourth section of the act. The establishment of a reasonable and non-prejudicial rate for the future is asked. Rates are stated in cents per 100 pounds and apply on lumber in carloads.

Accomac and Northampton counties, known as the eastern shore of Virginia, occupy the southern portion of the peninsula between the Atlantic Ocean and Chesapeake Bay. Defendant's line, a subsidiary of the Pennsylvania Railroad, serves this territory and extends north from Cape Charles, Va., to Delmar, Del., where it connects with the Philadelphia, Baltimore & Washington Railroad, another subsidiary of the Pennsylvania. Defendant operates a car float and barge service between Cape Charles and Norfolk, 36 miles across Chesapeake Bay. Complainants' lumber is drayed either to de-

fendant's stations, or to one of the many near-by inlets or bays, from which it is floated to Crisfield, Md., also served by defendant, or Franklin City, Va., served by the Philadelphia, Baltimore & Washington, from all of which points it moves by rail to Philadelphia and Wilmington.

For many years prior to February 23, 1915, the rate on lumber in carloads from all of defendant's stations on the eastern shore of Virginia, Cape Charles, and north to the Virginia-Maryland state line, a distance of about 60 miles, to Philadelphia and Wilmington, was 11 cents, minimum 34,000 pounds. On that date, following *The Five Per Cent Case*, 32 I. C. C., 325, it was increased to 11.6 cents, the present rate. At the hearing complainants stated that they were interested in the rates only from stations Machipongo to New Church, Va., inclusive.

Complainants compete at Philadelphia and Wilmington with dealers at Norfolk and other points in Virginia and points in North Carolina on lines serving Norfolk from the south and west. The rate on lumber to Philadelphia and Wilmington from Norfolk is 9.5 cents, and from many points in the vicinity of Norfolk the rates are slightly higher than the Norfolk rate, but are somewhat lower than the rate from the intermediate points on the eastern shore of Virginia. These departures from the rule of the fourth section were protected by appropriate fourth section applications which were heard with the complaint. Complainants contend that the 11.6-cent rate is unduly prejudicial to the points of origin in question and unduly preferential of Norfolk, and unreasonable to the extent that it exceeds 9.5 cents.

Complainants submitted numerous comparisons showing that the rates from points south of Norfolk to Norfolk and to Philadelphia and Wilmington and between points in the southeast were lower for equal or greater distances than the rate complained of. They also compared the rates in question with intrastate rates on lumber applying in Virginia, North Carolina, Georgia, Tennessee, Florida, Missouri, and Wisconsin, ranging from 7.5 cents to 10 cents, for 197 miles, which is the distance from Keller, Va., a representative point of origin of the 11.6-cent rate group, to Philadelphia and Wilmington. Intrastate rates are not controlling in gauging the reasonableness of interstate rates, but in connection with other facts and other rates, they are not without significance as a basis for comparison. *Weatherford Chamber of Commerce v. M., K. & T. Ry. Co.*, 31 I. C. C., 665. Defendant submitted numerous comparisons to show that the rates in question were on a parity with rates on the Pennsylvania system, and a further comparison showing that the rates on the Richmond, Fredericksburg & Potomac Railway and Washington South-  
47 I. C. C.



ern Railway from points in Virginia to the destinations in question are on the same basis as the rates before us. The apparent purpose of these exhibits for the most part is to show that the class rates from and to the points in question are reasonable, as in numerous instances commodity rates on lumber between the points selected, lower than the class rates, apply, and in numerous other instances no lumber moves between the points selected.

Defendant urges that the rate from Norfolk to Philadelphia and Wilmington is a low rate compelled by water competition. Some lumber moves from Norfolk to Philadelphia and Wilmington by water, principally in boats owned by lumber dealers at Norfolk, but on account of better marketing facilities about 60 per cent of this traffic moves all rail. Approximately 100,000,000 feet of lumber moved from Norfolk to Philadelphia and Wilmington during the first six months of each of the years 1914, 1915, and 1916. The water rate was formerly lower than the rail rate, but owing to the scarcity of boats the present water rates are somewhat higher than the rail rates. The water in the vicinity of the points of origin in issue is too shallow for boats of large capacity, and this fact, together with the further fact that more advantageous deliveries can be made by rail, operates to lessen the movement of lumber from this territory by water.

Lumber in carloads is rated sixth class in the official classification, which governs the movement between the points in controversy. The commodity rate on lumber between these points is the same as the sixth-class rate. The lumber rate from Norfolk to Philadelphia is 4.5 cents lower than the sixth-class rate; from points south of Norfolk much less than the sixth-class rates. From points on defendant's line from the Virginia-Maryland state line north to Delmar, Del., and on the Philadelphia, Baltimore & Washington from Delmar to Farmington, Del., rates of 9.5 cents and 8.1 cents apply on lumber to Philadelphia and Wilmington, respectively, while the sixth-class rate from and to these points is 11.6 cents.

The 11.6-cent rate from Keller yields 14.3 mills per ton-mile to Wilmington, 162 miles, and 11.8 mills per ton-mile to Philadelphia, 197 miles. Complainants' shipments average 50,000 pounds per car, and the present rate yields 35.8 cents per car-mile to Wilmington and 29.44 cents per car-mile to Philadelphia. The 11.6-cent rate to Wilmington and Philadelphia also applies to Bristol, Reading, and Harrisburg, Pa. The average distance from Keller to these points is about 215 miles, and the 11.6-cent rate yields 10.8 mills per ton-mile for this distance. A rate of 9.5 cents would yield 11.7 mills per ton-mile to Wilmington and 9.65 mills per ton-mile to Philadelphia, and an average of 8.8 mills to the points grouped with Wil-

mington and Philadelphia. On a basis of the average loading of 50,000 pounds a 9.5-cent rate would yield car-mile revenues of 29.3 cents to Wilmington, 24.1 cents to Philadelphia, and 22.1 cents to the grouped points of destination.

We find that the rate assailed is, and for the future will be, unreasonable to the extent that it exceeds and may exceed 9.5 cents per 100 pounds. The fourth section applications will be denied to the extent that they are involved.

Appropriate orders will be entered.

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No. 9312.

PACIFIC COAST SHIPPERS ASSOCIATION ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

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*Submitted May 1, 1917. Decided October 12, 1917.*

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Carload of fir lumber from Eagle Gorge, Wash., to Gordon, Nebr., found to have been misrouted. Reparation awarded.

*Baxter & Jones* for complainants.

*J. W. Quick* for Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations, one an organization of manufacturers and wholesalers of lumber and forest products at Seattle, Wash., and the other engaged in the manufacture of lumber at Buckley, Wash. By complaint, filed November 11, 1916, as amended, they allege that due to misrouting unreasonable and illegal charges were collected by defendants on a carload of fir lumber shipped January 14, 1915, from Eagle Gorge, Wash., to Gordon, Nebr. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment was delivered to the Northern Pacific Railway at Eagle Gorge, routed by the shipper "N. P. to transfer % C&NW." No rate was inserted in the bill of lading. The shipment weighed 46,920 pounds and moved over the Northern Pacific to Minnesota Transfer, Minn., thence over the Chicago, St. Paul, Minneapolis & Omaha and the Chicago & North Western railways, the latter hereinafter called the North Western, by way of Sioux City, Iowa, and Norfolk, Nebr., to Gordon. Charges were collected in the sum of



\$387.32 at a combination rate of 82.55 cents, composed of commodity rates of 45 cents to Minnesota Transfer and 37.55 cents beyond. A joint through rate of 49.5 cents contemporaneously applied on lumber from Eagle Gorge to Gordon by way of the Northern Pacific to Billings, Mont.; Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, to Crawford, Nebr.; and the North Western beyond. A combination rate of 69.55 cents was also applicable on lumber from and to the same points over the Northern Pacific to Oakes, N. Dak., and the North Western by way of Omaha, Nebr., to Gordon, composed of a rate of 50 cents to Omaha and a rate of 19.55 cents beyond. Complainants contend that the Northern Pacific misrouted the shipment because it failed to deliver it to the Burlington at Billings, in which event the joint through rate of 49.5 cents would have applied; and that the words "to transfer," inserted in the routing instructions, meant that the shipment should be delivered to the North Western. The initial carrier contends that in the territory where the shipment moved, "Transfer" is generally understood to refer to Minnesota Transfer. The Northern Pacific, however, had no connection with the North Western at Minnesota Transfer.

Following *Stebbins v. D., L. & W. R. R. Co.*, 42 I. C. C., 150, we find that as a complete route was specified in the bill of lading, there was no duty imposed upon the Northern Pacific to deliver the shipment to the Burlington at Billings. But we are of opinion that under the shipper's instructions the initial carrier should have delivered the shipment to the North Western at Oakes.

We find that the shipment was misrouted by the Northern Pacific Railway Company; that complainant, Green River Lumber Company, paid and bore the charges thereon, and was damaged by the misrouting to the extent of the difference between the charges collected and the charges that would have accrued if the shipment had moved by way of Oakes; and that it is entitled to reparation from the Northern Pacific Railway Company in the sum of \$60.99, with interest.

An appropriate order will be entered.

47 I. C. C.

No. 6902.

VAN DUSEN HARRINGTON COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY  
COMPANY ET AL.

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*Submitted March 29, 1917. Decided October 12, 1917.*

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Charges on corn in carloads from points in Iowa to Minneapolis, Minn., re-consigned thence to points in California, based on combination of rates to and from Minneapolis, found to have been illegal. Reparation awarded.

*H. A. Feltus and H. G. Simpson* for complainant.

*R. C. Sanders* for defendants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

We found in our original report, 35 I. C. C., 172, that the charges assessed by defendants on certain carloads of corn shipped from various points in Iowa and Nebraska to Minneapolis, Minn., re-shipped thence to various points in California, at the combination of rates to and from Minneapolis, were illegal to the extent that they exceeded charges based on the joint through rate of 55 cents per 100 pounds. We further found that complainant was entitled to reparation on all shipments as to which the requirements of the transit tariff regarding surrender of inbound expense bills of initial lines were complied with. Since the issuance of the original report herein the parties have agreed that the sum of \$2,081.83 is due on 26 of the shipments in controversy, but are unable to agree as to whether or not the tariff provision referred to was complied with in connection with the remaining 15 shipments, and the case has been reheard to determine complainant's right to reparation thereon. Rates are stated in cents per 100 pounds.

The shipments were billed to Minneapolis and moved to that point during December, 1912, and January, 1913, from Marcus, Gaza, Primgahr, Archer, and Remsen, Iowa, over the Illinois Central Railroad and the Minneapolis & St. Louis Railway, and from Hinton and Merrill, Iowa, over the Great Northern Railway. Complainant directed the inbound carriers to deliver the cars, which were placed on the grain inspection tracks at Minneapolis, to the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee. At Minneapolis the Great Northern transferred the contents of

three of the cars to other cars in order to hold its equipment on its line. Complainant directed the Milwaukee to reconsign all of the cars to various points in California. New bills of lading were issued and the shipments moved over the Milwaukee and its connections to destinations. Charges were collected on the shipments from Hinton and Merrill at combination rates of 66.5 cents, composed of rates of 11.5 cents to Minneapolis and 55 cents beyond, and on the shipments from the remaining points of origin at combination rates of 68 cents, composed of rates of 13 cents to Minneapolis and 55 cents beyond. One shipment weighed 73,225 pounds and outbound charges were paid on basis of 80,000 pounds, so that it was overcharged \$37.26, on account of excess weight.

At the time the shipments moved agent Countiss's tariff I. C. C. 929, to which all of the defendants were parties, named a joint rate of 55 cents from points in Iowa and other states, including the points of origin here concerned, to various points in California, including the final destinations of the shipments in controversy. This tariff provided that shipments made at the rates named therein would be subject to terminal charges, privileges, and allowances, including reconsignment, as authorized by tariffs of individual lines parties hereto.

The transit tariff of the Milwaukee provided that corn when originally destined to Minneapolis could be reforwarded at that point to points in California, within six months from date of shipment, at balance of the through rate, provided duplicate inbound expense bills of initial lines were attached to the reforwarding instructions. The inbound expense bills covering the movements to Minneapolis were not issued until some time after the shipments were delivered, for the reason that it appears to have been the practice of carriers to base the inbound freight charges on cars not unloaded at Minneapolis on the weight at ultimate destination. Therefore no inbound expense bills were available until after the shipments were finally delivered.

The reconsignment provision of the Milwaukee tariff in effect when the shipments moved read as follows:

Freight of all kinds, except fruit and vegetables (other than potatoes, carloads, reconsigned at Chicago, Ill.), may be reconsigned before delivery to a point beyond in the same general direction in which the freight is moving, while in transit on the rails of the Chicago, Milwaukee & St. Paul Railway, at an additional charge of \$2 per reconsignment above current tariff rate from point of origin to final destination, subject to regular car service or storage charges. When destination of shipment is changed in transit by proper authority, and before car reaches point to which billed, reconsigning charges, as provided above, will not apply.

Complainant contends on rehearing that under this latter provision, taken in connection with the fact that all carriers participating

in the transportation were parties to the tariff naming the joint rate and that the routing between the points of origin and destination was unrestricted, the 55-cent joint rate should have been assessed, and that the combination rates charged were illegal. *Mason Bros. v. S. P. Co.*, 28 I. C. C., 402, is cited in support of its position that the route through Minneapolis was reasonably direct.

For defendants it is asserted that the 55-cent joint rate was not applicable because the shipments did not move from the reconsigning point to points beyond in the same general direction in which the freight was moving from the points of origin. But there was nothing in the tariff naming the 55-cent rate that would have precluded complainant from routing the shipments through Minneapolis had they been billed through to the California points in the first instance. If it was defendants' purpose to restrict the application of the joint rate to any particular route and the reconsigning privileges authorized in connection therewith to any particular point, it should have been done by clear and unequivocal language.

The record is not clear as to whether or not the reconsignment orders were received prior to the arrival of the shipments at Minneapolis, and consequently we are unable to determine whether the \$2 charge was legally applicable.

We find that the charges collected were illegal to the extent that they exceeded the charges that would have accrued at the rate of 55 cents per 100 pounds, plus any applicable demurrage and reconsignment charges, which rate we find was legally applicable. We further find that complainant made the shipments as described and paid and bore the charges thereon, herein found to have been illegal; and that it was damaged to the extent of the difference between the charges collected and those that would have accrued at the rate legally applicable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record, and complainant should prepare a statement showing the details of the 41 shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

In view of our disposition of this case under the reconsignment provision of the Milwaukee's tariff, it will not be necessary to consider whether the shipments were entitled to the joint rate under the transit tariff.

No. 8448.  
WALLACE-SMITH & COMPANY ET AL.  
v.  
BOSTON & MAINE RAILROAD ET AL.

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*Submitted September 18, 1916. Decided October 12, 1917.*

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Rating on horse blankets in official classification territory not shown to be unreasonable or unduly prejudicial. Complaint dismissed.

*C. W. Denny* for complainants.

*W. A. Cole* for Boston & Maine Railroad.

*S. S. Perry* for New York, New Haven & Hartford Railroad Company.

*D. T. Lawrence* for official classification lines.

*William F. Garcelon* for intervener.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Wallace-Smith & Company and Benjamin Young Company, corporations, engaged in the manufacture of blankets at Milwaukee, Wis., and L. C. Chase & Company, a partnership engaged in a similar business at Boston, Mass. By complaint, filed November 11, 1915, they allege that the official classification first-class rating and the rates applicable thereunder on horse blankets are unreasonable and unduly prejudicial to the extent that they exceeded rule 25. The Nashua Manufacturing Company, of Boston, intervened at the hearing. The establishment of a reasonable rate for the future is asked.

Complainants manufacture horse blankets varying in size, price, and quality. These blankets are said to be composed of mixed cotton and wool, hair, rags, and other waste products. They are compressed into bales by hydraulic power, wrapped with burlap and paper, and move in less-than-carload lots. Under the heading of dry goods in the official classification, blankets n. o. i. b. n., in bales or boxes, are rated first class in less than carloads. No carload rating is named. Horse blankets or covers n. o. i. b. n. in less than carloads are rated first class in the official, southern, and western classifications. The official classification rates cotton knit fabric and cotton piece goods made wholly of cotton rule 25, which is 15 per cent less than second class. Cotton blankets are principally manufactured in the New England states, where they are rated rule 25 under

exceptions to the official classification. Complainants' contention is that horse blankets are cheaper than cotton blankets, and therefore should not be rated higher than rule 25.

None of the complainants appeared at the hearing, nor were they represented by anyone having a knowledge of the conditions surrounding the manufacture of horse blankets. The evidence introduced on their behalf was offered by their attorney of record, who, having no personal knowledge of the facts, was unable to state the volume of the traffic, the hazard of carriage, or any of the other elements essential to a determination of the reasonableness of a classification rating. His testimony consisted of unsupported statements made to him by complainants in correspondence and based on affidavits introduced at the hearing. Defendants objected to the admission of these affidavits.

For defendants it was stated that the blankets are manufactured from cotton or woolen fabrics and are divided into two classes, cotton and woolen. The fabrics are rated in the official classification according to the material of which they are made. Any article made of wool or cotton fabric, or a mixture of both, is generally rated first class, any quantity. Blankets composed of a mixture of wool and cotton may contain a large percentage of cotton and a small percentage of wool, or a small percentage of cotton and a large percentage of wool. For this reason it is insisted that it is impracticable to attempt to make a classification based on percentages of this kind which would open the door to concealments and misrepresentations. It is pointed out that in official classification territory outside of the New England states no blankets are carried at less than first class, which rating, it is urged, is reasonable and nondiscriminatory. A witness for the Boston & Maine Railroad testified that he considered the rule 25 rate on cotton blankets subnormal and that his company had considered increasing it to first class.

There is no showing that the rating attacked disadvantageously affects the business of complainants, nor has sufficient reason been advanced for withdrawing this article from the general class with which it is grouped.

Following *Union Made Garment Mfrs. Asso. v. C. & N. W. Ry. Co.*, 16 I. C. C, 405, and upon the record, we find that the rating assailed is not shown to be unreasonable or unduly prejudicial. An order dismissing the complaint will be entered.



No. 8451.  
**BERT RAMSEY & COMPANY ET AL.**  
*v.*  
**ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.**

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*Submitted October 11, 1916. Decided October 12, 1917.*

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Rates on beer in carloads from St. Louis, Mo., and Milwaukee, Wis., to El Paso, Tex., justified. Complaint dismissed.

*R. B. Daniel* for complainants.

*F. B. Houghton* for Atchison, Topeka & Santa Fe Railway Company.

*W. R. Brown* for Rio Grande, El Paso & Santa Fe Railroad Company.

*W. C. Barnes* for El Paso & Southwestern system and Chicago, Rock Island & Pacific Railway Company.

*E. H. Thornton* for Galveston, Harrisburg & San Antonio Railway Company, Houston & Texas Central Railroad Company, and others.

*C. W. Brosius* for Texas & Pacific Railway Company.

*Robert Dunlap, T. J. Norton, and F. E. Andrews* for defendants.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

Complainants are corporations engaged in the wholesale liquor business at El Paso, Tex. By complaint, filed November 13, 1915, they allege that the rates of 71 and 78 cents per 100 pounds maintained by defendants on beer in carloads from St. Louis, Mo., and Milwaukee, Wis., respectively, to El Paso are unreasonable and unduly prejudicial to the extent that they exceed rates of 58 and 65 cents applicable from the respective points to El Paso prior to November 1, 1915. Reparation is asked. Rates are stated in cents per 100 pounds.

For complainants it was stated that practically all beer shipped to El Paso comes from St. Louis and Milwaukee, and that during 1915 they received 355 carloads from these points.

The rates in effect prior to November 1, 1915, had been maintained for a number of years. As the rates assailed are the result of an increase on that date, the burden is on defendants to show that they are just and reasonable.

In *Corporation Commission of New Mexico v. A., T. & S. F. Ry. Co.*, 34 I. C. C., 292, hereinafter termed the *New Mexico Case*, there were involved, among other things, the reasonableness of rates on beer, in carloads, from Kansas City, Mo., St. Louis, and Chicago, Ill. (Milwaukee takes Chicago rates), to points in New Mexico, including Albuquerque, Rincon, and Alamogordo, and applications of the carriers for permission to charge rates on beer in carloads from the points of origin mentioned to El Paso lower than to intermediate New Mexico points. Albuquerque is about 250 miles north of El Paso on the Atchison, Topeka & Santa Fe Railway. The short-line distances from St. Louis and Milwaukee to Albuquerque are 1,166 miles and 1,424 miles, respectively, and to El Paso, 1,225 miles and 1,470 miles, respectively. Rincon is about 76 miles north of El Paso, on the Atchison, Topeka & Santa Fe, and Alamogordo is about 86 miles north of El Paso, on the El Paso & Southwestern Railroad. Those are the two most southerly points on the lines mentioned to which rates were prescribed in the *New Mexico Case*. We prescribed maximum rates on beer in carloads to Albuquerque, Rincon, and Alamogordo of 75 cents from St. Louis and 85 cents from Chicago, and authorized the carriers in making rates from Kansas City, St. Louis, and Chicago to El Paso to meet the water-and-rail rate from New York of 60 cents, 65 cents to be observed as a maximum rate to intermediate points, but stated that if they wished to maintain the then existing rates of 53 cents and 58 cents from Kansas City and St. Louis, respectively, to El Paso, 7 cents and 2 cents lower than the water-and-rail rate from New York, they must make the rates from Kansas City and St. Louis to intermediate points correspondingly lower than the 65-cent maximum. It was stated for defendants that a compliance with the order in that case necessitated a general revision of the rates to this territory which resulted in the discontinuance of the long-established practice of making rates to El Paso with relation to the rates to Texas common points and the establishment of rates to El Paso upon a new basis. From St. Louis the same rates were established to Albuquerque, Rincon, Alamogordo, and El Paso, namely, 71 cents, while from Chicago and Milwaukee rates of 76 cents were established to Albuquerque and Alamogordo and 78 cents to Rincon and El Paso. The rates from St. Louis and Milwaukee to El Paso yield ton-mile earnings of 1.16 cents and 1.06 cents, respectively, and, based on an average loading of 30,000 pounds, car-mile earnings of 17.4 cents and 16 cents, respectively. The earnings under the present rates from St. Louis and Milwaukee to Albuquerque are 1.22 cents and 1.07 cents, respectively, per ton-mile and 18.3 cents and 16 cents, respectively, per car-mile. The present rate of 53 cents on beer in carloads from St. Louis to Texas



common points, an average distance of 800 miles, yields ton-mile and car-mile earnings of 1.32 cents and 19.9 cents, respectively.

For defendants it was stated that in the readjustment of rates to this territory beer was not treated unfairly in comparison with other articles, and the 13-cent increase in the rates on beer was compared with increases in the rates from St. Louis and Chicago to El Paso of 13 cents on canned goods, 19 cents on packing-house products, 7 cents on sugar and sirup, and 14 cents on fifth-class commodities. It was also pointed out that defendants are required to pay 1 cent per mile for the use of both loaded and empty refrigerator cars in which beer is shipped, and that these cars are either returned empty or used to return empty beer containers, which take a very low rate.

Complainants offered no rate comparisons. They relied upon the long-continued maintenance of the former rates and the fact that El Paso is a railroad center to which the volume of movement of beer and other traffic is considerable. They attempted to construe our decision in the *New Mexico Case* as suggesting that the rate on beer from St. Louis to El Paso should not be increased above 60 cents. The language used in that case does not warrant such a construction. They offered no evidence bearing upon the question of undue prejudice except the statement that dealers at Albuquerque have the benefit of rates on beer to stations between that point and El Paso and nearer to El Paso than Albuquerque, which are the same as or lower than the rates from El Paso to the same points.

We find that defendants have justified the rates assailed, and the complaint will be dismissed. An order will be entered accordingly.

47 L. C. C.

No. 8522.  
NEW ERA MILLING COMPANY  
*v.*  
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

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*Submitted June 30, 1916. Decided October 9, 1917.*

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Switching charges at Arkansas City, Kans., on a carload of wheat from Sterling, Kans., milled at Arkansas City and reshipped to Hartford City, Ind., found not to have been unlawful. Complaint dismissed.

*E. F. Erbacher* for complainant.

*T. J. Norton* and *F. E. Andrews* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the milling and warehouse business at Arkansas City, Kans. By complaint, filed December 14, 1915, it alleges that certain switching charges at Arkansas City on a carload of wheat shipped from Sterling, Kans., to Arkansas City, there milled in transit, and the product reshipped to Hartford City, Ind., were unlawfully collected. Reparation is asked.

Complainant's mill is located at Arkansas City on the tracks of the St. Louis & San Francisco Railroad, hereinafter called the Frisco. The shipment moved from Sterling June 7, 1915, over defendant's line consigned to complainant at Arkansas City. The outbound movement to Hartford City was also over defendant's line and its connections. The shipment was switched by the Frisco from and to the tracks of the Santa Fe at Arkansas City to and from complainant's mill, for which the Frisco's switching charge of \$2 per car was imposed in each instance. The issue is one of tariff interpretation, complainant contending that defendant's tariffs provided for absorption of these switching charges.

Supplement No. 11 to defendant's tariff No. 7641-G, I. C. C. No. 6814, a reissue of No. 7641-F, in effect at the time of movement, provided under section 2 for the absorption of foreign lines switching charges as follows:

Foreign lines switching charges as published and on file with the Interstate Commerce Commission on interstate traffic \* \* \* will be absorbed by the Atchison, Topeka & Santa Fe Railway \* \* \* on carload shipments of competitive traffic.

\* \* \* \* \*

Except as shown in other items of section 2.

Defendants cited *Heyser Lumber Co. v. K. & W. V. R. R. Co.*, 37 I. C. C., 609. But in that case it was not established that either the line carrier or the switching line had disposition orders; and the demurrage charges would have accrued even had the shipment been delivered to the switching line.

Neither defendant's tariffs nor those of the Michigan Central appear to have provided for the payment of freight charges as a prerequisite to the release of cars to the switching line. The line-haul carriers concurred in a joint rate to Detroit. The Michigan Central did not concur in the joint rate over the route of movement, but defendant's tariffs provided for the absorption of the switching charges at Detroit. The line-haul carriers contracted to deliver the shipment to the Michigan Central, and therefore the course pursued by defendant was not justified. *National Clay Works v. M. & St. L. R. R. Co.*, 38 I. C. C., 353.

We find that there was no legal basis for assessing the demurrage charges. An order dismissing the complaint will be entered.

474. C. C.

No. 8609.  
MITCHELL, LEWIS & STAVER COMPANY  
v.  
CHICAGO & NORTH WESTERN RAILWAY COMPANY  
ET AL.

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*Submitted October 4, 1916. Decided October 12, 1917.*

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Rate on transplanter, other than tree transplanter, knocked down, without barrels, in less than carloads, from Racine, Wis., to Portland, Oreg., found to have been and to be unreasonable to the extent that it exceeded or may exceed the contemporaneous second-class rate. Reparation awarded.

*William C. McCulloch* for complainant.

*R. C. Fyfe* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in jobbing agricultural implements and vehicles at Portland, Oreg. By complaint filed January 20, 1916, it alleges that the first-class rate of \$3.40 per 100 pounds charged by defendants for the transportation of two less-than-carload shipments of transplanter, other than tree transplanter, knocked down, from Racine, Wis., to Portland, May 4 and 24, 1915, was unreasonable to the extent that it exceeded the third-class rate of \$2.45. Reparation is asked and the establishment of a reasonable rate for the future.

These transplanter are horse drawn implements used in transplanting vegetables. They are equipped with a barrel from which water is automatically delivered to each plant as it is placed in the ground. Other makes of transplanter have a galvanized-iron tank inclosed in a heavy wooden frame. Each shipment consisted of five transplanter, knocked down without barrels, one weighing 2,665 pounds and the other 2,695 pounds. They moved over defendant's lines and charges were collected at the legally applicable first-class rate of \$3.40 per 100 pounds. Complainant's witness stated that transplanter, without barrels or tanks, are very similar to two-horse corn planter which the western classification rates third class l. c. l., knocked down flat, and that the weights per cubic foot of these two implements when packed for shipment are 9.12 pounds and 10.7 pounds, respectively. Complainant also mentioned numerous agricultural implements, such as potato planter, potato diggers, disk

drills, cultivators, and harvesters, which it was stated are analogous to transplanters from a transportation standpoint and which are rated third class in less than carloads, knocked down. For defendants it was testified that the weights per cubic foot of transplanters, obtained from various manufacturers, ranged from 8 to 10 pounds. It was shown that the weights per cubic foot of numerous agricultural implements varied widely and were all greater than the weights of transplanters, although in some instances the differences were not large. Also that the weight per cubic foot of transplanters is not materially affected by the removal of the barrels, because when the barrels shipped with the transplanters are used for packing small and detachable parts, which otherwise would have to be packed in boxes.

Transplanters of the kind in controversy, including the barrels or tanks, in less than carloads, k. d., are rated first class in the southern classification and second class in the official classification.

The record affords no basis for establishing different rates on transplanters according as barrels or tanks are or are not attached thereto, but we find that the rate assailed was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed the second-class rate contemporaneously applicable from and to the points here in question. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$24.12, with interest.

An appropriate order will be entered.

47 I. C. C.

No. 8682.  
O. C. KINDRED  
v.  
CINCINNATI, NEW ORLEANS & TEXAS PACIFIC  
RAILWAY COMPANY.

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*Submitted November 23, 1916. Decided October 12, 1917.*

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Defendant's refusal to place cars for loading on its spur track about 2½ miles south of Rockwood, Tenn., not shown to have been unjustly discriminatory or otherwise in violation of the act. Complaint dismissed.

*Robert A. Littleton* for complainant.

*Charles D. Drayton* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the lumber business at Westel, Tenn. By complaint, filed February 21, 1916, he alleges that defendant's refusal to place at a point on Baker mine switch, a spur track leading off from defendant's main line about 2½ miles south of Rockwood, Tenn., cars necessary for loading 75 cords of tan bark destined to Cincinnati, Ohio, in accordance with its agreement with complainant, was unreasonable and unjustly discriminatory. Reparation is asked.

It appears that the point at which complainant desired the cars placed is on a steep grade where it is dangerous to leave cars. Defendant furnished complainant two cars but others placed near complainant's loading point ran down and forced cars onto the main line and wrecked them. Thereupon defendant refused to furnish complainant any more cars at that point. Due to a misunderstanding one car was subsequently placed at complainant's shipping point for another shipper, who looked after its safety until it was removed. Defendant has discontinued the shipping point in question.

No unjust discrimination or other violation of the act is shown. It follows that the complaint should be dismissed, and it will be so ordered.

No. 8888.  
FLANLEY GRAIN COMPANY ET AL. .  
v.  
GREAT NORTHERN RAILWAY COMPANY ET AL.

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*Submitted March 27, 1917. Decided October 12, 1917.*

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Rates on bulk corn in carloads from Green Valley and Cottonwood, Minn., to Kansas City, Mo., not shown to have been unreasonable or otherwise unlawful. Complaint dismissed.

*C. E. Childe* for complainants.

*Sanford H. E. Freund* for Great Northern Railway and Chicago, Burlington & Quincy Railroad Company.

*James B. Coffey* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Flanley Grain Company and Iowa-Dakota Grain Company, corporations engaged in the grain business at Sioux City, Iowa. By complaint, filed May 10, 1916, they allege that the rates charged by defendants on two carloads of bulk corn shipped May 29 and June 6, 1914, from Green Valley and Cottonwood, Minn., to Sioux City, reconsigned to Kansas City, Mo., were unreasonable, unjustly discriminatory, unduly prejudicial, and, in the case of the shipment from Green Valley, illegal, to the extent that they exceeded 13.75 cents. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments moved, as routed by the shipper, over the Great Northern Railway to Sioux City, from which point they were reconsigned to Kansas City. The shipper's order covering the shipment from Green Valley called for routing beyond Sioux City over the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, care of the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, at Kansas City. It moved over the Burlington to Kansas City, but at the instance of the purchaser was unloaded at an elevator located on the Burlington tracks, so that the Santa Fe did not participate in the movement. The record suggests, but it is not clear, that this shipment was overcharged \$3. The shipment from Cottonwood also moved from Sioux City to Kansas City over the Burlington, in accordance with the reconsign-

ing order in that case, and subsequently was reshipped over the Santa Fe to Arkansas City, Kans. The rates legally applicable over the routes of movement to Kansas City were 22.1 cents: 7.6 cents to Minneapolis, Minn., and 14.5 cents beyond.

At the time the shipments moved Santa Fe tariff I. C. C. No. 6240 provided, by appropriate intermediate application, a rate of 13.75 cents on corn, in carloads, from Green Valley and Cottonwood to designated points on the Santa Fe, including Kansas City, "via Gt. Nor. Ry., Sioux City, Iowa, C. B. & Q. R. R. and Kansas City or St. Joseph, Mo." Complainant contends that that rate would have been applicable had the Green Valley shipment been delivered to the Santa Fe at Kansas City in accordance with the shipper's order, even though that carrier performed only a switching movement, and that it was for this reason that such a delivery was desired. With this contention we can not agree. While Kansas City is in fact a point on the Burlington, it is only as a Santa Fe point of destination that it appears in the tariff carrying the 13.75-cent rate; and the item providing for the application of that rate to that point necessarily contemplated a line haul by the Santa Fe in connection with the Great Northern and the Burlington, conformably to the prescribed routing, above quoted. Had the appropriate routing been observed by the shipper and the shipment surrendered to the Santa Fe at St. Joseph for delivery at destination, the rate would have applied; as the shipment was routed and moved the rate was inapplicable.

Of the shipment from Cottonwood it suffices to say that, considered as destined to Kansas City, the rate sought was equally inapplicable, and that, considered as a through shipment to Arkansas City, the rate applicable from point of origin to ultimate destination is not in issue.

Upon the record we find that, while the shipment from Green Valley was not delivered to the Santa Fe at Kansas City conformably to the reconsigning order, no damage to the shipper is shown to have resulted, and that the rates charged on the two shipments are not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial. An order dismissing the complaint will be entered.



No. 9088.  
**TEMCO ELECTRIC MOTOR COMPANY**  
*v.*  
**BALTIMORE & OHIO RAILROAD COMPANY ET AL.**

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*Submitted January 4, 1917. Decided October 6, 1917.*

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Third-class rating in official classification territory on double coil springs in less than carloads not shown to have been or to be unreasonable or unjustly discriminatory. Complaint dismissed.

*Earl W. Cox* for complainant.

*H. D. Palmer* for defendants.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

Complainant is a corporation engaged in the manufacture of automobile accessories at Leipsic, Ohio. By complaint, filed July 31, 1916, it alleges that the third-class rates charged by defendants on numerous less-than-carload shipments of coiled springs from New York, N. Y., to Leipsic, during the period from February 4, 1914, to March 18, 1915, inclusive, were unreasonable and unjustly discriminatory to the extent that they exceeded the rule 26 rates which were and are 20 per cent less than third class. Reparation is asked and the establishment of a reasonable rate for the future. The claims were presented to the Commission informally September 30, 1915. Rates are stated in cents per 100 pounds.

The shipments consisted of vanadium steel coil springs used in the manufacture of automobile shock absorbers. They were of two sizes, one  $1\frac{1}{4}$  inches in diameter and  $5\frac{1}{2}$  inches long, made of material  $\frac{5}{8}$  of an inch in thickness, and the other  $1\frac{3}{4}$  inches in diameter and  $5\frac{3}{8}$  inches long, made of material  $\frac{3}{4}$  of an inch in thickness. A small spring was placed inside each large one, and they were shipped in barrels, the weight per barrel being approximately 700 pounds.

The freight bills covering these shipments are not in evidence. A statement attached to the complaint indicates that charges on most of the shipments were assessed at the third-class rates of 40 cents or 42 cents, the third-class rate having been increased to the latter amount on January 15, 1915, following *The Five Per Cent Case*, 32 I. C. C., 325, and that on one a rate of 42.5 cents and on another

a rate of 47 cents were assessed. Official classification No. 41, in effect at the time the shipments started to move, provided as follows:

**Springs:**

N. O. S.:	L. C. L.
Coiled, made of not less than $\frac{1}{8}$ -inch steel	R. 26
N. O. S.:	
In bags, boxes, barrels or casks	8

These ratings which first became effective in April, 1910, were continued until January 1, 1916, the effective date of official classification No. 43, which provided as follows:

**Springs:**

Springs, not otherwise indexed by name:

Iron or steel, other than wire:

Coiled:

Made of iron or steel less than  $\frac{1}{8}$  inch in thickness: L. C. L.

In barrels, boxes or crates: 8

Made of iron or steel  $\frac{1}{8}$  inch or over in thickness:

Loose or in packages: R. 26

Wire, iron or steel:

In barrels, boxes or crates: 8

The latter ratings are still in effect.

Rule 15-A of the official classification provided and provides, in substance, that the charge for a package containing freight of more than one class shall be at the rating provided for the highest classed freight contained in the package. It appears, therefore, that the third-class rates were legally applicable on these shipments. Charges collected in excess thereof should be refunded with interest.

It was testified on behalf of complainant that the larger sized springs are the more valuable, and it is contended that as such springs shipped separately are rated rule 26 it is unreasonable to charge the third-class rate on a mixed shipment of the two sizes, packed one within the other, which packing increases the density of the shipment. No evidence was introduced respecting the allegation of unjust discrimination.

It was testified on behalf of defendants that in fixing the ratings on coiled springs based on the thickness of the material of which they are made, it was the carriers' purpose to separate the springs into two classes depending upon their size and weight, the dividing line being fixed at five-sixteenths of an inch upon representations of the spring manufacturers that that was the line of demarcation generally accepted by the trade; that, generally speaking, small springs made of material less than five-sixteenths of an inch thick are comparatively light in weight and range in value from 8 cents per pound to \$2 per pound, while the large springs, usually made of bars or rods, of which the springs used on locomotives and other railway equipment are representative, and which constitute the great bulk of the movement, are

very heavy and are valued, on an average, at 5 cents per pound or less, and that a number of the latter springs are made and used in the form of double coiled springs, one being inside the other. The springs here considered are considerably more valuable than springs of the same size made of ordinary steel. It is contended that considering the weight and value of springs made of material less than five-sixteenths of an inch in thickness the third-class rating thereon which applies also on iron and steel hardware, is reasonable; and that the nesting rule in the classification was not intended to apply to articles of the kind in issue, which as shipped were not nested within the terms of that rule. This rule, which provides that a package containing articles of more than one class will be charged at the rate for the highest classed article contained therein, is one of almost universal application. Defendants showed that the present ratings on coiled springs were generally satisfactory to the spring manufacturers, this complaint being the only one which had been received; and that shipments of the kind here under consideration constitute such an extremely small proportion of the total movement of springs as not to warrant a change in the classification to specifically cover them. In this connection *Planters' Compress Co. v. C., C., C. & St. L. R. Co.*, 11 I. C. C., 382, was cited. In this case we said:

If the rate on an article is reasonable to those who ship the great bulk of that article in the form in which it is commonly prepared for transportation, that rate in our opinion does not become unreasonable to the shipper of a smaller quantity of the same article merely because he chooses to prepare his shipments in a form which affords the carrier a greater profit per 100 pounds \* \* \*. No classification can be so minute as to conform to the differing varieties and conditions of traffic.

The present descriptions of these springs in the official classification are identical with those in the western classification and conform to the recommendations of the Committee on Uniform Classification.

We find that the rates assailed are not shown to have been or to be unreasonable or unjustly discriminatory. An order dismissing the complaint will be entered.

No. 9161.  
J. P. LEWIS COMPANY  
*v.*  
LOWVILLE & BEAVER RIVER RAILROAD COMPANY  
ET AL.

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*Submitted January 24, 1917. Decided October 12, 1917.*

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Class and commodity rates between Beaver Falls, N. Y., on the Lowville & Beaver River Railroad, and points on the New York Central Railroad outside of the state of New York, higher than the corresponding rates to or from Lowville, N. Y., the point of junction of the two lines, found not unreasonable or unduly prejudicial. Complaint dismissed.

*Thomas G. Smiley* for complainant.

*Parker McCollester* for New York Central Railroad Company.

*E. J. Boshart* for Lowville & Beaver River Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of fiber board and products at Beaver Falls, N. Y. By complaint, filed August 28, 1916, as amended, it alleges that the rates on "all material" between points on the Lowville & Beaver River Railroad and points on the New York Central Railroad, made by combination on Lowville, N. Y., are unreasonable and unduly prejudicial. Joint rates not exceeding the rates to or from Lowville are asked for the future. Rates are stated in cents per 100 pounds.

The Lowville & Beaver River Railroad, which began operating January 15, 1906, extends from Lowville to Croghan, N. Y., 11 miles, and maintains freight stations at New Bremen, Croghan, and Beaver Falls, N. Y. It is owned and operated independently of the New York Central, with which it interchanges freight at Lowville, and which furnishes all freight equipment except that used for local traffic. Beaver Falls, its principal shipping point, with a population of about 750, is approximately 9 miles from Lowville. Complainant's freight comprises about 30 per cent of the railroad's total tonnage.

While the allegations of the complaint are not so limited, we may consider only rates on traffic destined to or originating at points on the New York Central outside of the state of New York. Complainant's evidence was directed principally to the outbound rates or

wood-pulp board and wood-pulp board boxes, and to the class rates inbound and outbound. From central freight association territory to points on the Lowville & Beaver River joint rates are made on the basis of the rates to Lowville, plus arbitraries which equal the local rates of that line, while in the reverse direction the rates are the straight combinations.

Wood-pulp board is made from new wood pulp and is shipped in rolls or bundles. Its value varies from \$35 to \$75 per ton. Wood-pulp board boxes, knocked down, are shipped flat, in bundles. Both commodities are wrapped with heavy paper for protection. Between Beaver Falls and Lowville the Lowville & Beaver River maintains commodity rates on wood-pulp board and wood-pulp board boxes, in carloads, of 2.9 cents, minimum 36,000 pounds, and in less than carloads, of 4.2 cents. The New York Central publishes commodity rates on wood-pulp board from Lowville to points in central freight association territory, the rate to Chicago, Ill., being 21.7 cents, minimum 36,000 pounds. Wood-pulp board boxes are and long have been rated fifth class, minimum 36,000 pounds, in the official classification. At complainant's request, by exceptions to the classification, the basis from Lowville to points in central freight association territory was reduced in 1915 to sixth class, minimum 36,000 pounds. The sixth-class rate from Lowville to Chicago is 23.8 cents.

Complainant contends that it encounters sharp competition in central freight association and trunk line territories with manufacturers located at Fulton, Carthage, and other points in New York, Monroe, Mich., and South Windham, Me. But it was unable to cite any instance where competitors located on short independent lines enjoyed rates lower than the combination rates from and to junction points with trunk lines.

Complainant contrasts the rates on wood-pulp board in carloads from Beaver Falls with relatively lower rates from Fulton and Piermont, N. Y., and South Windham to Cleveland and Cincinnati, Ohio, Marion, Ind., Chicago, and St. Louis, Mo., but is without knowledge of the comparative transportation conditions.

The New York Central connects with a number of short lines of railroad in New York, but applies the junction point rates in connection with but three of them, the Norwood & St. Lawrence, which extends from Norwood to Waddington, N. Y., 18 miles; the Bush Terminal Railroad, which takes New York City rates generally, and the South Brooklyn Railway, which takes those rates outbound. Waddington is a point on the St. Lawrence River, on the opposite bank of which is Morrisburg, Canada, a station of the Grand Trunk Railway, and between Waddington and central freight association territory joint rates are made by the addition of certain arbitraries

to the rates to and from Norwood, the junction with the New York Central. Joint rates are published from and to Raymondville and Norfolk, N. Y., local stations on the Norwood & St. Lawrence, the same as the rates from and to Norwood. Large news print paper mills are located at Raymondville and Norfolk, and defendants testified that the Grand Trunk was negotiating to install a car-ferry service between Waddington and Morrisburg for the purpose of handling the output of those mills, and that in order to hold that traffic to its own rails the New York Central extended the Norwood rates back to Norfolk and Raymondville. Apparently the product of the mills located at those points is not such as to compete with complainant's wood-pulp board and wood-pulp board boxes.

Complainant compares the class rates between Chicago and points on the Lowville & Beaver River with the class rates between Chicago and Raymondville and Massena Springs, N. Y. The class rates, Lowville to Chicago, are the same as the rates from Massena Springs and Raymondville, which are the Boston, Mass., differential rates, 10 cents under New York on first class, applicable over the differential routes through Canada, met by the New York Central and eastern connections and applied from all points north and east of Richland, N. Y., known as the Ogdensburg group. Lowville takes the New York basis of class rates from Chicago, and Massena Springs and Raymondville take the Boston basis. The Boston rates eastbound are the following differentials in cents per 100 pounds over the corresponding class rates on the first six classes to New York: 7, 6, 5, 4, 3, and 2. The rates on the six classes between Beaver Falls and Lowville are as follows: 10.5, 9.5, 8.4, 6.3, 4.2, and 3.7 cents.

Following *The Five Per Cent Case*, 32 I. C. C., 325, defendants increased their class rates to their present bases. No contention was made that either the class or commodity rates of the New York Central as applied to or from Lowville, or of the Lowville & Beaver River applied locally, are unreasonable. The 24.6-cent commodity rate on wood-pulp board from Beaver Falls to Chicago, 809 miles, produces 6 mills per ton-mile and, based on the 36,000-pound minimum, 10.9 cents per car-mile. The traffic to points west of Buffalo involves local freight service to Lowville, Carthage, and Watertown, N. Y., successively, and main-line service beyond.

We find that the rates assailed are not unreasonable or unduly prejudicial. An order dismissing the complaint will be entered.



No. 9181.  
CONTINENTAL CAN COMPANY  
*v.*  
ATLANTIC CITY RAILROAD COMPANY ET AL.

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*Submitted March 13, 1917. Decided October 9, 1917.*

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Rates on empty tin cans in carloads from Baltimore, Md., to Philadelphia, Pa., Camden, N. J., Hickman and Seaford, Del., Hancock, W. Va., Melfa, Va., and to Bethlehem, Md., moving interstate, found to have been unreasonable. Reparation awarded.

*A. E. Beck* for complainant.

*Francis R. Cross* for Baltimore & Ohio Railroad Company, Atlantic City Railroad Company, and Philadelphia & Reading Railway Company.

*Walter S. Franklin jr.*, for Pennsylvania Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; and West Jersey & Seashore Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of tin cans at Syracuse, N. Y. By complaint, filed September 20, 1916, it alleges that the charges collected by defendants for the transportation of 278 carloads of empty tin cans from Baltimore, Md., to Philadelphia, Pa., Camden, N. J., Hickman and Seaford, Del., Melfa, Va., Hancock W. Va., and to Bethlehem, Md., moving interstate, between February 23 and June 23, 1915, inclusive, were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments moved over various routes by way of defendants' lines; 247 to Philadelphia and Camden; 27 to Hickman, Seaford, Melfa, and Bethlehem; and 4 to Hancock. Charges were collected at the fourth-class rates of 12.6 cents to Philadelphia and Camden, 18.9 cents to Hickman, Seaford, Melfa, and Bethlehem, and 18.1 cents to Hancock.

Prior to December 1, 1914, commodity rates applied on this traffic from Baltimore 9 cents to Philadelphia and Camden, 11 cents to Hickman, Seaford, Melfa, and Bethlehem, and 14 cents to Hancock. On that date the commodity rates were canceled, leaving applicable the fourth-class rates. Effective February 23, 1915, following *The*

*Five Per Cent Case*, 32 I. C. C., 325, the class rates were increased 5 per cent. On May 1 and 2, 1915, defendants established commodity rates of 10 cents from Baltimore to Philadelphia and Camden and on later dates established commodity rates of 14 cents from Baltimore to the other destination points, and these rates are now in effect. Complainant contends and defendants admit that the rates charged were unreasonable to the extent that they exceeded those subsequently established.

We find that defendants have not justified the application of the class rates on these shipments and that the rates charged were unreasonable to the extent that they exceeded the rates subsequently established and now in force. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

As the present rates have been in effect for more than two years, no order for the future is necessary.

47 I. C. C.



No. 9202.

CREAMERY PACKAGE MANUFACTURING COMPANY  
v.  
KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL

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*Submitted April 11, 1917. Decided October 12, 1917.*

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Reparation on egg-case fillers in carloads from Coffeyville, Kans., to Gentry, Ark., denied. Complaint dismissed.

*Arthur L. Utermark* for complainant.

*B. A. Rogers* for Kansas City Southern Railway Company.

*F. B. Clark* for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of dairy supplies at Coffeyville, Kans. By complaint, filed September 11, 1916, it alleges that the rate of 27 cents per 100 pounds charged by defendants on a carload of egg-case fillers shipped February 10, 1914, from Coffeyville to Gentry, Ark., was unreasonable to the extent that it exceeded 20 cents. Reparation is asked. The claim was presented to the Commission informally August 21, 1914. At the hearing complainant abandoned its allegation of unreasonableness and substituted therefor, without objection by defendants, an allegation of undue prejudice. Rates are stated in cents per 100 pounds.

The shipment moved over defendants' lines. It weighed 28,828 pounds and charges were ultimately collected in the sum of \$81 at the legally applicable joint commodity rate of 27 cents, minimum 30,000 pounds. When the shipment moved a carload commodity rate of 20 cents, minimum 30,000 pounds, applied on egg-case fillers to Gentry from Kansas City, Mo., and points in Kansas City territory on the Kansas City Southern Railway. Coffeyville is located in Kansas City territory, but is not served by the Kansas City Southern. Effective May 12, 1915, defendants reduced the rate from Coffeyville to 25 cents and increased the rate from Kansas City to 25 cents. This adjustment is satisfactory to complainant.

As any undue prejudice that may have existed has been removed, and as the record does not contain proof of damage resulting from the alleged undue prejudice, an order dismissing the complaint will be entered.

No. 9207.  
**SOUTHERN CAN COMPANY**  
v.  
**SOUTHERN RAILWAY COMPANY ET AL.**

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*Submitted March 13, 1917. Decided October 12, 1917.*

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Rate on empty tin cans in carloads from Baltimore, Md., to North Wilkesboro, Elkin, Ronda, and Roaring River, N. C., found to have been unreasonable. Reparation awarded.

*Arthur B. Hayes* for complainant.

*Walter S. Franklin, jr.*, for Pennsylvania Railroad Company.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

Complainant is a corporation engaged in manufacturing tin cans at Baltimore, Md. By complaint, filed September 26, 1916, it alleges that the fifth-class rate of 51.5 cents per 100 pounds charged by defendants for the transportation of 21 carloads of empty tin cans from Baltimore to North Wilkesboro, Elkin, Ronda, and Roaring River, N. C., between April 1, 1913, and August 22, 1914, inclusive, was unreasonable to the extent that it exceeded 45 cents. Reparation is asked. The claim was presented to the Commission informally March 6, 1915. Rates are stated in cents per 100 pounds.

The shipments, which were apparently unrouted, originated on the Baltimore & Ohio, Philadelphia, Baltimore & Washington, or Pennsylvania railroads and moved 6 by way of Shenandoah, W. Va., 13 by way of Potomac Yards, Va., and 2 by way of Harrisburg, Pa., in connection with the lines of the other defendants to the destinations in question, which are located in northwestern North Carolina. Charges were collected in the sum of \$1,818.22, based on an aggregate weight of 353,052 pounds, and the legally applicable joint fifth-class rate of 51.5 cents, minimum 15,000 pounds. The average short-line distance from and to the points in question is 418 miles by way of Potomac Yards and the Southern Railway. For this average distance the rate assailed yields 2.5 cents per ton-mile and, based on 16,812 pounds, the average weight of the shipments, 20.7 cents per car-mile. Based on the minimum weight of 15,000 pounds, car-mile earnings would be 18.5 cents.

For complainant it was shown that during the period the shipments moved a joint carload commodity rate of 45 cents, minimum

15,000 pounds, applied from Baltimore to Newport and Rankin, Tenn. These points are in northeastern Tennessee, an average distance of 523.5 miles from Baltimore by way of the short-line route through Potomac Yards and Bristol, Tenn. This rate yielded ton-mile earnings of 17.2 mills and, based on the minimum weight, car-mile earnings of 12.9 cents. At the time of movement the fifth-class rate from Baltimore to these points was 52 cents. The rate contemporaneously applicable on empty tin cans in carloads, minimum 15,000 pounds, from New York, N. Y., to Asheville, N. C., a distance of 705 miles over the short-line route, was 45 cents, which yielded ton-mile and car-mile revenues of 12.8 mills and 9.6 cents, respectively. Effective September 15, 1914, a carload commodity rate of 45 cents, minimum 15,000 pounds, was established from Baltimore to the destinations in question. This rate, which is still in effect, applied via all the routes over which the shipments moved.

All of the defendants except the Norfolk & Western Railway, which was not represented at the hearing, admit that the rate attacked was unreasonable and express willingness to make reparation upon the basis sought.

We find that the charges collected were unreasonable to the extent that they exceeded those that would have accrued at a rate of 45 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

As the rate herein found reasonable has been in effect for more than two years, no order for the future is necessary.

47 L. C. C.

No. 8508.

**SOUTHERN LUMBER & MANUFACTURING COMPANY**

*v.*

**TENNESSEE RAILWAY COMPANY ET AL**

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*Submitted June 10, 1916. Decided October 12, 1917.*

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Rate on lumber in carloads from Nick's Creek, Tenn., to Cincinnati, Ohio, not shown to be unreasonable but found to be unduly prejudicial as compared with the rate from Norma, Tenn., to Cincinnati.

*Perkins Baxter and O. P. Anderson* for complainant.

*Wimbish & Ellis and W. A. Wimbish* for Tennessee Railway Company and its receiver.

*Charles D. Drayton* for Cincinnati, New Orleans & Texas Pacific Railway Company.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION :**

Complainant is a corporation engaged in the lumber and stave business, with its principal office at Nashville, Tenn., and a sawmill and stave mill at Nick's Creek, Tenn. By complaint, filed December 9, 1915, it alleges that defendant's rate of  $17\frac{1}{2}$  cents per 100 pounds on lumber, in carloads, from Nick's Creek to Cincinnati, Ohio, is unreasonable to the extent that it exceeds  $12\frac{1}{2}$  cents per 100 pounds, and when compared with a rate of 15 cents per 100 pounds maintained by defendants on the same commodity from Norma, Tenn., to Cincinnati, is unduly prejudicial to complainant and Nick's Creek and unduly preferential of Norma and those doing business at that point. Rates are stated in cents per 100 pounds except when otherwise indicated.

Nick's Creek and Norma, local stations on the Tennessee Railway, are located 30 miles and 22 miles, respectively, southeast of Oneida, Tenn., the junction of the Tennessee Railway with the Cincinnati, New Orleans & Texas Pacific Railway, and 240 miles and 232 miles, respectively, from Cincinnati. The  $17\frac{1}{2}$ -cent rate assailed is a joint commodity rate based on the Tennessee Railway's local rate of 8 cents from Nick's Creek to Oneida, and  $9\frac{1}{2}$  cents beyond, the Cincinnati, New Orleans & Texas Pacific accepting as its division  $2\frac{1}{2}$  cents less than its local rate from Oneida to Cincinnati.

The contention is made that the divisions received by the Cincinnati, New Orleans & Texas Pacific out of joint rates on lumber from

points on the Kentucky & Tennessee Railway to Cincinnati, and from points on the Tennessee Central Railway to the same destination, show that its division of the 17½-cent rate is in part responsible for the alleged unreasonableness of the rate. These facts unsupported by a further showing have little weight.

Except as above noted, the entire attack upon the through rate is directed against the component applicable south of Oneida. The 12½-cent rate asked is based upon a division of 3 cents to the Tennessee Railway. In contending that 3 cents would be a reasonable division, complainant urges that in *The Tap Line Case*, 31 I. C. C., 490, 3 cents was the maximum division permitted the tap lines for a haul of 30 miles. The situation here presented is not analogous to that considered in the case cited.

Numerous rates of other carriers in the same and other territories are referred to by complainant and defendants. Some of those rates are combination rates; some apply over the rails of only one carrier; and some apply on traffic originating on narrow-gauge railroads and lines employing geared locomotives. But little testimony of a satisfactory character is offered either as to the relative transportation conditions or the relative density of traffic in the respective territories in which the rates apply; nor does it affirmatively appear that there is any movement under some of the rates cited.

The Tennessee Railway, whose construction was begun in 1889, has approximately 60 miles of track, exclusive of sidetracks. Since July 1, 1913, it has been in the hands of a receiver. It handles about 10 cars of lumber per day, and this constitutes from 80 to 85 per cent of its total traffic. The record does not disclose the amount of its capital stock or what portion, if any, of that stock has been paid up. It is stated that its funded debt consists of \$1,130,000 of first mortgage bonds, in addition to which there are outstanding \$115,000 of receiver's certificates, all of which were sold for cash and the proceeds expended upon the road; that this defendant has never paid a dividend on its capital stock; has paid only about \$2,000 in interest on its bonds, and the amount of interest in default December 31, 1915, was about \$279,000.

The New River Lumber Company owns a large timber tract in this territory adjoining that of complainant and has its mill at Norma. With the exception of the complainant's mill, it is the only band-saw mill on the line of the Tennessee Railway, and it is the alleged preferential adjustment of rates in favor of Norma of which complainant particularly complains. The alleged prejudicial features of this adjustment are said to be due not only to the adjustment of lumber rates out of Norma and Nick's Creek, but to the maintenance of a low basis of log rates into Norma. The log rates are not before

us in this proceeding, which is confined to the outbound rates on lumber.

The rate from Nick's Creek to Cincinnati is  $2\frac{1}{2}$  cents higher than from Norma and the distance is 8 miles greater. The proportion received by the Tennessee Railway out of the joint rates from Nick's Creek is 8 cents, or the same as its local from that point to Oneida. The local of the Tennessee Railway from Norma to Oneida is 7 cents and in the construction of the joint rate of 15 cents from Norma, this defendant accepts  $1\frac{1}{2}$  cents less than its local. It is complainant's contention that the different basis employed in the construction of the joint rates referred to is prejudicial, and that for the added haul of only 8 miles, no additional charge should be made. With respect to the difference between its locals and the proportions received by it out of the joint rates, this defendant represents that substantially no lumber moves from Nick's Creek or Norma to Oneida under the local rates and those rates "mean nothing." But it appears that on all classes of freight on which local distance rates are published by the Tennessee Railway, approximately one-half of the classes may move between Oneida and Nick's Creek under rates no higher than between Norma and Oneida, no difference existing in the rates on logs, and on first class the difference is only 2 cents. Moreover, certain of these rates apply on less-than-carload shipments many of which must be transferred to other cars at Norma. It may also be noted that the rates named in this tariff, including the local lumber rates, are 1 cent higher from Nick's Creek than from Norma and are applicable for use in making combination rates to interstate points where no joint rates are in effect. We are unable to accept the view that this defendant's local rates on lumber are entirely without significance in determining the relative rates from Nick's Creek and Norma.

The rate from Norma has been 15 cents since 1906. The rate from Nick's Creek was 17 cents when first established in 1909. Effective June 20, 1910, the rate from Nick's Creek was reduced to  $16\frac{1}{2}$  cents. Effective March 1, 1914, it was increased to the present basis. Before complainant determined upon the location of its mill at Nick's Creek, negotiations had been pending between it and the Scott County Land Company for the purchase of a mill site at Winona, Tenn., a station on the Tennessee Railway 17 miles north of Nick's Creek. The offer of sale was made in December, 1913, but was not accepted. Arrangements were later completed for the erection of the mill at Nick's Creek, and complainant was not advised that the rate had been increased until after the completion of the mill. It is asserted by defendants that the increase in the Nick's Creek rate was made to secure proper alignment with rates from points south of Nick's

Creek. With the exception of Straight Fork, Tenn., the present rates from all points south of Nick's Creek are 18 cents.

Upon this record we are unable to find that the rate under consideration is unreasonable for the service performed. However, no sufficient explanation has been offered for the increased spread that has been effected between the rates from Nick's Creek and Norma, and we are convinced that the spread in the rates to Cincinnati of  $2\frac{1}{2}$  cents is too great for an 8-mile difference in distance in view of the other facts shown. The rate from Nick's Creek to Cincinnati is higher than that formerly maintained, but the present rates from all other points on the Tennessee Railway to Cincinnati are the same as or lower than the rates formerly maintained therefrom.

We find that defendants' rate on lumber, in carloads, from Nick's Creek to Cincinnati is, and for the future will be, unduly prejudicial to complainant and Nick's Creek to the extent that it exceeds or may exceed by more than 1 cent per 100 pounds the rate contemporaneously maintained on lumber in carloads from Norma to Cincinnati.

An appropriate order will be entered.

47 I. C. C.



**INVESTIGATION AND SUSPENSION DOCKET No. 1012.<sup>1</sup>**

**OFFICIAL CLASSIFICATION No. 44.**

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*Submitted June 18, 1917. Decided November 13, 1917.*

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1. Proposed change in ratings and increased minimum weight on natural stone justified.
2. Proposed change in ratings on tailors' woolen clippings and increased ratings on roller bearings not justified.
3. Present rating on certain roller bearings found unreasonable.
4. Reparation denied.

*Parker McCollester, T. H. Burgess, Frederic L. Ballard, and Douglas Swift* for respondents.

*W. A. Cole and William F. Peter* for Official Classification Committee.

*William F. Peter* for Chicago, Terre Haute & Southeastern Railway Company and Chicago, Indianapolis & Louisville Railway Company.

*R. N. Collyer, F. W. Smith, J. W. Allison, and D. T. Lawrence* for lines in official classification territory.

*Francis B. James; Charles M. Haskins; Littleford, James, Ballard & Frost; E. E. Williamson; Wayne P. Ellis; Clarence B. Hewes; and R. D. Cunningham* for National Association of Waste Material Dealers, protestant.

*H. P. Radley* for Bedford Stone Club Auxiliary, protestant.

*J. G. Ray* for Indiana Quarries Company, Indiana Lime Stone Association of New York.

*W. M. McMillan* for W. M. McMillan & Son.

*Seward W. Jones* for National Granite Manufacturers Association.

*George James* for National Building Granite Quarries Association, National Association of Granite Industries of the United States, and Woodbury Granite Company, protestants.

*Sam Griggs and Walter W. Drayer* for Journeymen Stone Cutters Association of North America.

*A. W. Edson, Robert C. Bacon, and E. W. Lawrence* for Vermont Marble Company, protestant.

*Frederick A. Norris* for Concrete Stone Manufacturers Association of New England and Emerson & Norris Company, interveners.

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<sup>1</sup>This report also embraces No. 9508, Hyatt Roller Bearing Co. v. Delaware, Lackawanna & Western R. R. Co. et al.



*J. H. Fishback* for Hyatt Roller Bearing Company, complainant and protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases are related and will be disposed of in one report.

By schedules contained in official classification No. 44, filed to take effect February 1, 1917, the carriers in official classification territory proposed higher ratings and consequent increased rates on various articles; also an increase in the minimum weight on natural stone from 30,000 pounds to 36,000 pounds. Upon protests by various shippers the operation of the new schedules was suspended until December 1, 1917.

Complainant in No. 9508 is a corporation dealing in steel roller bearings at Harrison, N. J. By complaint, filed February 14, 1917, it attacks the present official classification ratings on steel roller bearings, other than car bolster, in carloads and less than carloads, as unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked and the establishment of reasonable ratings for the future. The allegations of unjust discrimination and undue prejudice were abandoned at the hearing.

The articles concerned will be considered separately

TAILORS' WOOLEN CLIPPINGS.

The present ratings on tailors' woolen clippings, which are those applicable to rags, are: Second class, in less than carloads, in bags or bales, not machine pressed, or in barrels or crates; fifth class, in less than carloads, in machine-pressed bales; and sixth class, in carloads, in packages named, minimum 24,000 pounds, for 36-foot cars, subject to rule 27, which provides graduated minima for cars of extra length. The following ratings are proposed on woolen clippings, tailors' clippings from woolen cloths: In bags or in bales, not machine pressed, in less than carloads, second class; in machine-pressed bales, in less than carloads, fourth class; and in packages named, in carloads, minimum 24,000 pounds, subject to rule 27, fifth class.

Woolen clippings are remnants of new goods and are made into shoddy or remanufactured into new woolen cloth. The principal sources of supply are merchant tailors and ready-made clothing establishments. Rags, on the other hand, are old articles that have been discarded and are usually collected by house to house canvass. About 20 per cent of all woolen rags are new clips. Old woolen

raggs are used for the same purpose as clips. Cotton raggs and cotton clips, on the other hand, are to a great extent used in the manufacture of paper.

For respondents it is contended that new woolen clips are a distinct class of raggs and are so recognized by the trade, and that they have a substantially higher range of values than other articles which are now included under the heading of raggs. It is observed, by reference to various trade journals filed as exhibits, that new woolen clips are shown as a separate item under the heading "raggs," and that prices thereon are noted separately. While it is asserted that some dealers handle only new woolen clips, the majority also handle old woolen raggs. New woolen clips are shipped principally in machine compressed bales of various dimensions and in carloads their average loading is said to be about 25,000 pounds. From an exhibit filed for respondents showing the dimensions and weight of 11 bales of clips obtained at various establishments, it appears that their average weight per cubic foot is 17.9 pounds and their value from 12 cents to 30 cents per pound. Protestants contend that new woolen clips have an approximate density of 21 pounds per cubic foot; old woolen raggs from 20 to 30 per cent less; and the average density of all raggs 20 pounds per cubic foot. While admitting that new woolen clips can be distinguished from other articles classified as raggs, protestants assert that it would require an expert to do so. For example, cotton worsted is a cotton fabric made to imitate a woolen worsted, and it requires an expert to distinguish between them; unions are clippings composed partly of wool or shoddy, with a cotton warp, and under the proposed classification would be called a woolen clip. In the trade a clipping which has been stitched is considered an old rag. Some old woolen raggs are more valuable than new woolen clips, but it would appear that the average value of woolen clips is higher than that of woolen raggs. Some new woolen clippings contain 95 per cent cotton and old woolen raggs often contain 85 per cent wool. The purchaser of old raggs frequently buys both old and new woolen raggs, and when shipped in carloads under the proposed classification these raggs would take the higher rating, even though the bulk of the shipment consisted of old woolen raggs.

It is asserted for respondents that new woolen clips have approximately the same value as wool in the grease and are used for the same purpose, and that in comparison with the ratings on wool the ratings on new woolen clips can not be considered unreasonable. Wool in the grease, in bags, or in bales, not compressed, in less than carloads, is rated first class; in machine-pressed bales, in less than

carloads, second class; and in packages named, in carloads, minimum 16,000 pounds, subject to rule 27, third class.

In *Official Classification Ratings*, 37 I. C. C., 166, we found that the respondents had not justified a proposed change in the ratings on rags, in less than carloads, from fifth class to fourth class. No change was there proposed in the carload rating. Protestants have filed extracts of the evidence in that case as exhibits in the present case. It is pointed out that in that case the chairman of the Official Classification Committee testified that it was not feasible to classify rags according to the range in value any more than it would be feasible to undertake to be more specific as to what the term "rags" would cover; that the cheapest rag greatly preponderates and the smaller amount is represented by the higher value; and that one could not take an average of the value of rags because for every pound of tailors' clips there would be a carload of ordinary rags.

It is also asserted for respondents that the proposed rating for a maximum haul in official classification territory will result in an increase not in excess of 6 cents per 100 pounds, or approximately one-sixteenth cent a pound, and contended that as one-eighth cent a pound is the lowest fraction used by dealers in making prices, the increase would not greatly affect the price of the woolen clips.

We have consistently held that classification must be based upon a real distinction from a transportation standpoint. A classification can not be regarded as scientific, or a difference in rates as well based, which is altogether founded upon a distinction that has no transportation significance. Such a differentiation would lead to an almost endless multiplication of rates, which would find no excuse save the use which might be made of the articles transported. *Stowe-Fuller Co. v. Pennsylvania Co.*, 12 I. C. C., 215.

It seems clear from the record that the transportation characteristics with respect to woolen clips are the same as those with respect to old rags. They both move in machine-compressed bales of about the same density, the claims for damages are practically negligible, and no special equipment is necessary in their transportation. It is true that the value of the clips, as a whole, is somewhat greater than that of old rags. But the value of an article is only one of the many factors to be considered, and especially is this true where, as in the present case, there is no additional cost or service rendered in the transportation of the article of greater value. *Rates on Cream and Condensed Milk*, 21 I. C. C., 522.

We find that the proposed increased ratings on woolen clippings, tailors' clippings from woolen cloths, have not been justified.

## NATURAL STONE.

For many years the official classification has rated polished stone and monuments, in carloads, minimum 30,000 pounds, fifth class; all other kinds of stone, in carloads, same minimum, sixth class. As a result of protests from certain dealers in Indiana limestone and in view of descriptions recommended by the Committee on Uniform Classification, the Official Classification Committee, after hearings, recommended the establishment of two groups for natural stone: First, rough quarried or sawed, four sides or less, fourth class in less than carloads, sixth class in carloads; and second, sawed more than four sides or chiseled, dressed, hammered, or sand rubbed, carved, lettered, polished, or traced, rule 26 in less than carloads, fifth class in carloads. The schedules under suspension embody the recommendations above set forth. The monument interests do not object to the proposed schedules.

The real question here presented is, where the line or lines between the rough quarried and the more finished stone should be drawn.

It was stated for respondents that the line was drawn at stone sawed four sides or less on the theory that when the stone is sawed on the fifth side it has a building surface and is in fact a finished stone, which places it on a parity with terra cotta and enameled brick, competing commodities, which are rated fifth class in carloads. Also that it is sometimes necessary to load small quantities of the more advanced form with the building stone and in order to prevent the operation of rule 10 of the classification the ratings were made different from those provided in the western classification.

The proposed ratings do not literally follow the western classification for, while the descriptions are reproduced, the same ratings are proposed for carved, lettered, polished, or traced natural stone and for stone sawed more than four sides and chiseled, dressed, hammered, or sand rubbed, whereas the western classification draws a further line between stone, chiseled, dressed, hammered, or sand rubbed, and stone, carved, lettered, polished, or traced.

Certain of the Indiana limestone dealers, who testified in favor of the proposed ratings, urge that it is unscientific and unfair to rate rough quarried natural stone the same as various grades of finished stone of greatly increased value; that of the 940 stonecutters in this country 40 are located in the Bedford, Ind., district; that one-quarter of the stone is cut at the quarries; that cutters outside the quarrying district are at a great disadvantage in competing with plants near the quarries because they must pay charges on the rough stock of which approximately 30 per cent is wasted in fabrication; that rough stone

loads more heavily, is less liable to damage, and is less valuable than the varying grades of finished stone; and that the differential, finished over rough quarried, should be sufficient to give the cut-stone contractors at destination an advantage over the quarry operators to the extent of the amount of waste in fabrication. A representative of certain dealers in limestone objected to a change in the classification which would result in rates on stone cut four sides or more higher than those on rough quarried stone, and expressed the opinion that the line should be drawn at cut, carved, and lettered stone which is much more valuable. He estimated that about 35 per cent of limestone was merchantable in the block outside the quarrying district and that the balance could be worked within the district so cheaply as to overcome any reasonable differential; and asserted that for the differential to do the large eastern cities any good it would be necessary to make the rate on cut stone prohibitive. On account of restrictions placed by contractors and cutters, cut stone is not shipped to the large cities in small quantities.

Indiana limestone is found in the Bedford-Bloomington district. It is a comparatively soft, easily worked, and highly desirable building stone, although not susceptible to polish as is granite or marble. In 1915, 25,000 cars of limestone of approximately 60,000 pounds each were transported from this district, which furnished for that year 72.6 per cent of all the structural limestone used in the United States, an amount equal to 60.5 per cent of the exterior and interior marble, 62 per cent of the structural granite, and 208 per cent of the sandstone, used in the United States. The value of limestone varies from 15 cents to 35 cents per cubic foot for rough stone, 70 cents per cubic foot for stone sawed more than four sides, and from \$1 to \$4 per cubic foot for cut stone, and its average weight per cubic foot universally recognized is stated to be 200 pounds for rough unscabbeled block, 180 pounds for scabbeled, 170 pounds for sawed two sides or four sides, 150 pounds in strips not further finished, 140 pounds for cut ready to set, and 130 pounds for turned stone. The loss and damage claims are negligible.

Granite is found principally in the New England states, where about 55 per cent of the total output is quarried. Rough building granite is worth from 20 cents to \$1 per cubic foot; dressed building granite varies in value according to size, shape, and finish of block, the value of that used in several large buildings throughout the country varying from \$1.43 to \$2.12 per 100 pounds. The proportion of carved stone in a building varies according to the design, but ordinarily will not average over 5 per cent. Rough granite weighs about 230 pounds to the cubic foot and finished ready for building purposes, 165 pounds to 180 pounds per cubic foot.



The demand for building granite is spasmodic, varying with different localities and demand for buildings. The principal markets for the New England granite are roughly defined as north of North Carolina, east of the Rocky Mountains, and south of Canada. It is asserted for protestants that throughout that territory competition is met from southern and middle western granite quarries, Indiana limestone, Ohio and Missouri sandstone, and other exterior building materials. Sawing is said not to be very important when applied to granite, because practically no granite is sawed on more than four sides. A witness for protestants estimated that 50 per cent of monumental shipments are polished, dressed, lettered, or carved and 50 per cent chiseled and hammered. He expressed the opinion that the line should be drawn at chiseled. It is shown that the companies represented by the National Building Quarries Association have \$4,500,000 invested, and that the statistics from 1912 to 1915, inclusive, disclose an annual business of \$3,500,000. The total output of building granite for the year of 1914 was valued at \$6,500,000; for 1915, \$4,700,000; and for 1916, estimated to be about 50 per cent under 1915. The decrease in the output is stated to be due to the few high-grade building operations, the European war, the high prices of steel, advances in wages for labor, and increased freight rates. It is stated for protestants that under the proposed classification approximately 98 per cent of the granite would be rated rule 26, in less than carloads, and fifth class, in carloads; that building granite now pays from 8 per cent to 16 per cent of its value for transportation charges; and that higher ratings would ruin the granite industry. As in the case of limestone claims for loss and damage are practically negligible.

Marble is found principally in Vermont. The annual output of the largest producer in official classification territory is stated to be 100,000 tons. About one-half of this amount is sawed on more than four sides or sand rubbed; one-fourth chiseled, dressed, or hammered; one-fifth polished; and the balance sawed four sides or less. It is used for both interior and exterior work, the former being about one-fourth of the total output. Rough marble is worth from 35 cents to \$5 per cubic foot, the average being from \$2.50 to \$2.75, and weighs from 140 pounds to 164 pounds per cubic foot. The marble interests object to the proposed classification by which the ratings are increased on marble sawed on more than four sides and on marble chiseled, dressed, hammered, or sand rubbed. They assert that sawed marble is their stock; that sawing consists of drawing a smooth iron back and forth on a block of marble under the action of water and sand, which makes a cut one-fourth of an inch wide; that sawed marble is in no more advanced state of fabrication than rough granite

sput to dimensions; and that sand rubbing is an inexpensive process of curing defects in the sawing. Because of its nature, the breaking of marble would be a much greater waste. The sawing on the fifth and sixth sides is to avoid this waste and to avoid expense of squaring ends. Protestants point out that marble and granite have a higher initial cost than limestone; that the nature of the marble is such that it is not a practical method of working to break it to size or shape after it has left the large rough quarried blocks, unless it is in very thin shape, while the sawing is a practical method of cutting from the rough stock; that the trade has established that sawing more than four sides is the rule, except in very thin slabs from seven-eighths to one and one-fourth inches thick; and that the sawing of the fifth or sixth sides does not materially increase the value. Also that chiseled, dressed, hammered, or sand-rubbed marble, of rough and inexpensive character, is used for the exterior of buildings, and therefore competes with other materials, such as brick, concrete, wood, and iron.

In *Marble from Rutland, Vt.*, 38 I. C. C., 12, we said:

In publishing new schedules applicable to this traffic respondents should consider the propriety of establishing a spread between the rate on rough quarried marble and the rate on other marble, in line with our decision in *Rates on Stone and Marble from Chicago and Peoria*, 34 I. C. C., 390.

In *Rates on Stone and Marble from Chicago and Peoria*, *supra*, we found that the carriers had not justified the increased rates proposed on rough stone and marble, but had justified them on stone and marble, sawed or dressed.

The propriety of establishing a spread between the rating on rough stone and on the more finished product is undisputed. The determination of where the line should be drawn is not without its difficulties. However, the action of respondents is a step toward uniformity and should be encouraged. Upon the whole record we are of opinion and find that the proposed ratings on natural stone have been justified.

#### MINIMUM WEIGHTS.

No objection to the proposed increased minimum weight was voiced by the limestone interests. On behalf of the marble interests it was shown that marble will load well over 40,000 pounds per car. The only objection which was made to the proposed increased minimum was that it might in some instances prove a burden to dealers who handle only small lots. The same objection was voiced by the granite dealers, although granite also usually loads well over the proposed minimum, which is the same as that considered and approved in *Drake Marble & Tile Co. v. Northern Pacific*, 37 I. C. C., 512.

We find that the proposed increased minimum weight has been justified.

#### BEARINGS.

The only protestant against the changes proposed in the ratings on bearings is the complainant in No. 9508, wherein the reasonableness of the present ratings on bearings "other than car bolster" is brought in issue. It will hereinafter be referred to as complainant.

The steel roller bearings manufactured by complainant consist of what is called a roller assembly, a series of flexible, spiral, steel spools attached by means of pinions running through the center of the spools to circular steel plates at each end. In some instances the roller assembly is encased in a steel cylinder, termed an outer race; in others, between two steel cylinders, the inner one being termed an inner race; while in other instances the assembly is inclosed in a cast-iron jacket, with attachments for application to factory power transmission shafts. These bearings are manufactured according to specifications, four exhibits filed by complainant as representative ranging from 2 inches to 4½ inches in diameter and from 3 inches to 6 inches in length.

Exhibit 1, a shafting bearing, which comprises about 3 per cent of complainant's output, is now specifically rated third class in less than carloads and fifth class in carloads. The schedules under suspension eliminate this specific rating and propose to apply on this shafting the ratings applicable to roller bearings, n. o. s., i. e., second class in less than carloads and third class in carloads. Exhibits 2 and 3 are practically alike, except in size and method of application. Both are used largely in automobile construction and comprise about 96 per cent of complainant's output. At present they are classified "other than car bolster" and under the proposed schedules "ball or roller bearings, n. o. s." No change is proposed in the present ratings of second class in less than carloads and third class in carloads. Exhibit 4 is similar in construction to Exhibits 2 and 3, although larger and somewhat different in the method of assembly. It constitutes about 1 per cent of complainant's output. These bearings are used in the construction of mine and industrial cars and, dependent upon their use, are billed as "car bolster" or "car journal" bearings. The present ratings are fourth class in less than carloads and fifth class in carloads on "car bolster" bearings, and third class in less than carloads and fourth class in carloads on "car journal" bearings. The proposed schedules change the descriptions on "car bolster" to "car bolster plate, with or without rollers" and on "car journal" to "car journal: alloy (car journal bearings of babbitt or other soft metal alloys)." The change in these descriptions

47 L. C. C.



will prevent the application of the ratings now applicable on "car bolster" and "car journal" bearings to the bearings heretofore shipped and billed by complainant as such, and will make applicable thereto the rating proposed on ball bearings, n. o. s., namely, second class in less than carloads and third class in carloads.

Complainant does not object to the proposed descriptive changes, but contends that all of the bearings manufactured by it should be rated third class in less than carloads and fifth class in carloads.

With reference to shafting bearings a witness for respondents testified that the cast-iron jacket, if shipped separately, would be rated fourth class in less than carloads and fifth class in carloads, and that the bearings, if shipped separately, would be rated second class in less than carloads and third class in carloads, and that, instead of rating the completed article equal to its highest rated component, it should be rated intermediate to the two ratings, or third class in less than carloads and fourth class in carloads.

The bearings represented by Exhibits 2 and 3, now classified as "other than car bolster," range in value from 15 cents to 90 cents per pound, of which 50 per cent is valued at 20 cents per pound. The average value is said to be about 35 cents per pound. They move daily, about 85 per cent in carloads. During the period from June 1, 1915, to March 1, 1917, complainant shipped 648 carloads, which averaged 41,266 pounds per car, and 5,730,000 pounds in less than carloads. They are securely packed in boxes convenient for handling and load compactly, their average weight being 115 pounds per cubic foot. When shipped in less than carloads other commodities may be loaded on top of them without risk of damage. The record shows that there are practically no claims for loss or damage on these bearings.

Complainant points out that for a period of practically two years it has urged upon the Official Classification Committee and the carriers the necessity for the revision of the present ratings so as to place bearings in a class with other articles more nearly analogous. As a result of these representations the Official Classification Committee recommended to the carriers the establishment of a fourth-class rating in carloads, with no change in the less-than-carload rating. All of the interested carriers, with one exception, as well as complainant, agreed to this change, but, owing to the objection of the one carrier, it could not be made.

In justification of its contention that roller bearings, in carloads, should be accorded the fifth-class rating, complainant points out that many articles which are stated to be analogous to or comparable with roller bearings now take that rating, i. e., engine parts, finished crank shafts, automobile engine and gear parts of iron and steel,

gasoline engine starters, agricultural machinery and parts, and various other classes of machinery and parts thereof. It shows that a fourth-class carload rating now applies on a much higher class of commodities, such as wheel gears of bronze or brass, iron and steel filing cabinets, mechanics' tools, automobile axles and attachments, automobile axle with roller bearing attachments, automatic shock absorbers, etc. The third-class carload rating, which now applies on roller bearings other than car bolster, also applies on aluminum castings, auto lamps, wind shields, pneumatic tires, electric fans, electric spark plugs, and other articles of similar character. It is observed by complainant that these articles are all more fragile, of relatively greater value, and afforded the carriers much less earnings per car than bearings. Also, that a great many of the articles now classified fifth class in carloads take a minimum of 24,000 pounds, whereas bearings, other than car bolster, take a minimum of 30,000 pounds. A willingness to have the present minimum increased to 36,000 pounds was expressed.

The average car-mile earnings, taking the average car loading over the Delaware, Lackawanna & Western Railroad, which handles by far the greater portion of complainant's tonnage, is between 32 cents and 33 cents, and it would be practically the same over the Pennsylvania Railroad.

In support of the contention that its bearings should be rated third class in less than carloads, complainant points out that numerous machines and machinery parts are rated second class in less than carloads and fifth class in carloads and urges that considering that bearings are in many instances less valuable, load more compactly, and are less liable to damage than machinery, the differential between the less-than-carload and the carload ratings on bearings should be less than on machinery.

For respondents it is insisted that there is no real analogy between complainant's products and machinery; that the above-mentioned recommendation of the Official Classification Committee was not based upon the intrinsic unreasonableness of the third-class rate as applicable to carload shipments of ball or roller bearings, nor did the lines approve it for that reason; that the recommendation was based upon a comparison of the bearings manufactured by complainant with automobile engine and gear parts made of aluminum, brass, bronze, or copper, which were at that time rated second class in less than carloads, and fourth class in carloads; and that it was felt by the lines most interested in the traffic that there might be some reason for comparing ball and roller bearings with these automobile engine and gear parts made of higher priced metals, not because they are in any way competitive, but because they are both articles of high

value which enter into automobile construction. It is stated that after the making of this recommendation a change took place in the financial condition of the carriers, illustrated by respondents' exhibits, which are similar to those filed in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and that owing to the need of the carriers for more revenue their policy has changed and that whenever any inconsistency in ratings is shown it will be removed by increasing the rating on the lower rated commodity to the level of the rating on the articles with which comparisons are made. It was stated that the Official Classification Committee had docketed for consideration a proposed change in the ratings on automobile engine and gear parts made of aluminum, brass, bronze, or copper, to first class in less than carloads and third class in carloads, and these changes have since been made. No change was made in the ratings of second class in less than carloads and fifth class in carloads on automobile engine and gear parts made of iron and steel, which articles, it is stated for complainant, are more nearly analogous to its products.

Attention is called on behalf of respondents to the fact that, while complainant's bearings average only about 35 cents per pound, other bearings are manufactured in official classification territory of much higher value, and instances are cited of roller bearings valued at \$1.66 per pound and of ball bearings valued at \$3 per pound and in some cases at greatly in excess of that figure. Based upon the rates in effect prior to *The Fifteen Per Cent Case*, it is stated for respondents that the freight charges on complainant's shipments amount to only 1.117 per cent of their value. From this and the further fact that complainant has greatly increased its plant facilities and its shipments of ball bearings during the past few years, it is urged that the present ratings are reasonable. Complainant contends that by using the average weight the freight charges equal 2.2 per cent of the value of its shipments.

In explanation of the proposed charges on car-bolster and car-journal bearings, it is stated for respondents that these ratings were established many years ago; that the article for which the rating on car-journal bearings was provided was what is commonly known as car brasses, rough trough-shaped brass castings the inner facings of which are lined with a soft metal surface, such as babbitt; that the car-bolster bearings consisted of two heavy iron plates with round bars of steel which constituted the rollers; that both of these articles were in use on all railway passenger and freight cars; and that these ratings were not intended to cover the bearings represented by Exhibit 4, which are more valuable. It is admitted that the bearings, which are billed by complainant as car-bolster or car-journal bearings, according to the method of their application, may properly be

termed car journals, but respondents insist that they are not car bolsters, in any sense of the word, and are not used for the same purpose.

No reasons appear why the same rating should not apply on all of complainant's bearings, and in so far as the schedules under suspension provide for increased ratings thereon we find that they have not been justified and that maximum reasonable ratings to apply on these bearings for the future will be third class in less than carloads and fourth class in carloads. We further find that the present ratings on bearings "other than car bolster" of second class in less than carloads and third class in carloads are, and for the future will be, unreasonable to the extent that they exceeded or may exceed third class in less than carloads and fourth class in carloads. Reparation will be denied.

Appropriate orders will be entered.

COMMISSIONERS HARLAN, AITCHISON, and WOOLLEY did not participate in the disposition of these cases.

47 I. C. C.

**INVESTIGATION AND SUSPENSION DOCKET No. 1013.**  
**GRAIN TRANSIT AT MICHIGAN STATIONS.**

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*Submitted October 3, 1917. Decided November 13, 1917.*

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Proposed cancellation of waiver of back-haul or out of route charges on grain milled in transit at certain stations in Michigan north of the main line of the New York Central Railroad and consigned to Bryan and Toledo, Ohio, and points south and east thereof, found justified. Orders of suspension vacated.

*D. P. Connell* for New York Central Railroad Company.

*James E. Greene* for Michigan State Millers' Association.

*O. C. Hoffman* for Amendt Milling Company.

*Herman Mueller* for Lansing Chamber of Commerce and Thomas Milling Company.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION :**

By schedules, filed to take effect February 1, 1917, respondent New York Central Railroad Company proposed to cancel the waiver of back-haul or out of route charges on grain milled in transit at certain stations in Michigan north of its main lines between Elkhart, Ind., and Toledo, Ohio, when the product is destined to Bryan, Ohio, or Toledo and points south and east thereof. Upon protests by the Michigan State Millers' Association and the Amendt Milling Company, of Monroe, Mich., the schedules were suspended until December 1, 1917. Rates stated are in cents per 100 pounds.

Between Chicago, Ill., and Buffalo, N. Y., respondent has two main lines extending east from Elkhart to Toledo, known as the old main line and the air line. The former extends through the following branch-line junctions in southern Michigan: White Pigeon, Jonesville, Hillsdale, and Lenawee Junction; and the latter, 10 miles shorter than the former, extends through the following branch-line junctions: Goshen, Kendallville, Waterloo, and Butler, Ind., and Bryan. Both lines are used for through traffic of all kinds, and points on each are considered, for rate-making purposes, as main-line points. Branches, in Michigan, of the old main line extend from White Pigeon through Kalamazoo to Grand Rapids, 94.5 miles; from Jonesville north through Litchfield, 6.5 miles, to Lansing, 60 miles; from Jonesville north to Jackson, 24.5 miles; from Hillsdale northeast by way of Manchester, to Ypsilanti, 61 miles; from Lenawee

Junction northwest through Manchester to Jackson, 42.5 miles; from Lenawee Junction east to Monroe, 29 miles; and from Toledo north by way of Monroe to Detroit, 64 miles. Other branches extend from the old main-line junctions to the air line.

Since September 1, 1911, respondent's tariffs, governing the milling or malting of grain in transit, have provided a charge of one-half cent per 100 pounds, minimum \$3 per car, on inbound shipments, in addition to the through rate from point of origin to ultimate destination; also a distance scale of rates to cover out of route or back-haul movements of grain into the milling point, when the product moves out over the same road. On November 16, 1914, the back-haul scale was increased 5 per cent, the rates now ranging from 1.6 cents for 25 miles or less to 5.8 cents for 250 miles and over 175 miles. These rates apply in addition to the local, reshipping, or proportional rates on the product outbound from the milling point to the final destination. By exception, they do not apply on shipments to the milling or malting stations on respondent's branch lines named above, extending north from the main lines between Elkhart and Toledo, and certain other less important branches in this vicinity, such stations being treated as intermediate points when the grain originates at stations taking the same or a higher rate basis than the milling or malting station, and when the product is consigned to or through Bryan or Toledo. The present rules also provide that when the back-haul charge is assessed the one-half cent milling-in-transit charge is not applicable. Under the suspended tariffs respondent proposes to eliminate the exception of the above branch-line milling points from the application of the back-haul scale, and to render applicable the through rates from original point of shipment to final destination, plus the one-half cent milling-in-transit charge and the back-haul or out of route charge. For example, under the present tariffs the through rate of 17.5 cents plus the one-half cent milling-in-transit charge applies on a shipment of grain from Chicago milled in transit at Grand Rapids, when the product is reshipped to New York; under the proposed tariffs the charges on such a shipment would be 23.8 cents, made up of the through rate of  $17\frac{1}{2}$  cents, the one-half cent milling-in-transit charge, and 5.8 cents for the out of line haul of 189 miles from White Pigeon to Grand Rapids and return. If Grand Rapids were not now excepted from the charge for the out of line haul, the rate under the present tariffs would be 26.3 cents, made up of a rate of 5.8 cents from Chicago to Grand Rapids and a local rate of 20.5 cents on grain products from Grand Rapids to New York. Thus, in this instance the proposed rate would be 2.5 cents lower than if the exception as to the branch-line points were simply eliminated. The following illustrates another



result: At the present time grain may be shipped from a point east of Hillsdale on the old main line, milled in transit at that point, and the product reshipped through the original point to eastern destinations at the rate applicable from the original point of shipment, plus the one-half cent milling charge, if the rate from such point is as high as or higher than the rate from Hillsdale, whereas under the proposed rules additional charges would be assessed for the back-haul movement to Hillsdale.

In support of its contention that the present rates are unduly low, respondent shows, among others, that the out of route haul of 189 miles from White Pigeon to Grand Rapids and return is approximately 19 per cent of the distance from Chicago to New York through the junction point; from Jonesville to Lansing and return, 120 miles, 12 per cent; from Hillsdale to Norvell and return to Lenawee Junction, 72 miles, 7.5 per cent; from Air Line Junction, near Toledo, to Monroe and return, 44 miles, 4.5 per cent; and from Jonesville to Litchfield and return, 18 miles, 1.4 per cent. Also, that upon shipments of grain from Chicago, where approximately 50 per cent of protestants' tonnage originates, when milled in transit at the principal branch-line milling points on its line in Michigan and the product reshipped to New York, respondent's revenue per car of 40,000 pounds minimum, after deducting payments for switching, grain doors, and elevation, is \$60.34; that its net car-mile revenue is 5 cents, based on the total distance by way of Grand Rapids 1,165 miles, Lansing 1,096, Norvell 1,047, and Monroe 1,013 miles; and 6 cents per car-mile by way of Litchfield, 989 miles; that upon similar shipments from Chicago through the same milling points to Norfolk, Va., its net revenue, based upon its division up to Toledo, for distances ranging from 278 miles to 432 miles, less payments for switching, grain doors, elevation, and a transfer charge of 3 cents per 100 pounds to the Chesapeake & Ohio Railway Company, is \$4.60 per car and from 1 cent to 1.6 cents per car-mile.

Respondent urges that the grain and grain products rate structure of Chicago and related rate points to eastern and Virginia cities was made in contemplation of uninterrupted or continuous service over the short line in one direction; that the arrangement which it proposes to cancel is the only one of its kind for which it receives no additional compensation; that all other central freight association lines publish similar rules and scales of back-haul or out of line charges, and that no free back-haul or out of line movement is allowed on any other commodities, its scale of back-haul charges on beans and hay being higher than the scale for grain. The lowest back-haul charge on commodities other than grain is 2.1 cents.



Numerous instances are cited to show that in other territories the out of line charges on grain are higher for similar distances than those proposed. The service for which the out of route charge is made includes switching the car out of and into the through trains at the junction point and into and out of other trains for movements to and from the milling point and the hauls to and from the milling point. A witness for respondent testified that if the proposed tariff is allowed to become effective the scale of out of route or back-haul charges on grain to milling points will apply uniformly over its lines.

Protestants contend that, inasmuch as the proposed additional charges will not apply on grain milled at points on the old main line or at Buffalo, although all are on "indirect" routes to New York, those points will be accorded preferential treatment. There is, however, a substantial difference between "indirect" or circuitous, as distinguished from so-called short-line routes, which are the principal or regular avenues of traffic, on the one hand, and routes which include out of line or lateral departures therefrom, on the other; and, as respondent observes, if milling stations on the old main line were to be treated as branch-line points, it would then become necessary to assess still higher charges to and from points on the branches north of the old main line, based on the additional distance from the air-line junctions. Concerning protestants' complaint of the application of the proposed charges, on grain milled at Monroe, for the out of line haul in the route through Toledo, in the face of joint rates applying over the Michigan Central Railroad by way of Detroit through Monroe to Toledo for milling in transit, thence back to Detroit and east by way of Suspension Bridge, N. Y., and respondent's line, without an out of line charge, it may be said that under the existing tariffs shippers could route Michigan Central grain for movement beyond Monroe by way of Toledo and respondent's line thence and thus avoid the out of line haul if a like charge were to be made therefor.

Protestants' evidence deals largely with commercial conditions, and does not challenge the intrinsic reasonableness of the through rates, of the scale of back-haul charges, or of the transit charge. They principally urge that under the proposed arrangement the millers at Grand Rapids and other branch-line milling points will be driven from the Chicago grain market and the business will go to Toledo and other points on respondent's main lines.

In *Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co.*, 15 I. C. C., 138, 141, we said:

The defendants, of course, may voluntarily publish a free back-haul or a merely nominal rate for the extra service, and neither course would necessarily

meet with objection from this Commission if no discrimination were involved. But we see no clear ground upon which we can require the defendants to perform a back-haul or out of line service free of charge or for less than a reasonable charge.

The millers located upon the branch lines may be subjected to some disadvantage in comparison with competitors located along respondent's main lines if they are required to pay higher rates to and from the various markets in which they deal, but the disadvantage would arise from their location. Upon all the facts of record we find that respondent has justified the proposed cancellation of the waiver of back-haul or out of line charges and the resulting increased rates, and an order will be entered vacating the orders of suspension.

COMMISSIONER WOOLLEY did not participate in the disposition of this case.

47 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 961.<sup>1</sup>  
WESTERN TRUNK LINES IRON AND STEEL.

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FOURTH SECTION APPLICATION No. 11051.

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*Submitted October 3, 1917. Decided November 12, 1917.*

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Proposal of respondents to increase or cancel practically all commodity rates on iron and steel articles applying within western trunk line territory and from points east of Chicago and the Mississippi River to points in western trunk line territory found generally not justified, but authority given to publish higher rates than are at present maintained. Suspended schedules required to be canceled.

*O. W. Dynes* for respondents generally.

*C. A. Lahey* for Chicago, Milwaukee & St. Paul Railway Company; *James B. Coffey* for Atchison, Topeka & Santa Fe Railway Company; *A. F. Cleveland* for Chicago & North Western Railway Company; and *Henry G. Herbel* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

*H. C. Barlow* for Chicago Association of Commerce; *J. H. Beek* for St. Paul Association of Commerce; *A. E. Helm* for Public Utilities Commission for the state of Kansas; *Dwight N. Lewis*, *J. H. Henderson*, and *E. H. Scott* for Iowa Board of Railroad Commissioners; and *E. G. Wylie* for Greater Des Moines Committee and shipping and business interests of Des Moines, Iowa.

*W. P. Trickett*, *T. A. McGrath*, *D. C. Conn*, and *H. D. Morley* for Minneapolis Traffic Association; *Charles S. Belsterling* and *F. T. Bentley* for Illinois Steel Company, Indiana Steel Company, Minnesota Steel Company, American Bridge Company, American Steel & Wire Company, American Sheet & Tin Plate Company, National Tube Company, and Carnegie Steel Company; *Wilmer M. Wood* and *H. D. Hughes* for United States Cast Iron Pipe & Foundry Company, American Cast Iron Pipe Company, James B. Clow & Son, and Massielon Iron & Steel Company; *W. E. Long* for Manufacturers Association of Sterling, Ill., and Northwestern Barbed Wire Company; *E. J. McVann* for Commercial Club of Omaha and Metropolitan Water District of the City of Omaha, Nebr.; *M. J. Maloney* for Central Foundry Company and Southern Soil Pipe Association; *L. B. Boswell* for National Associa-

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<sup>1</sup> The report also embraces Investigation and Suspension Docket No. 1087, entitled Western Trunk Lines Iron and Steel (No. 2).

tion of Stove Manufacturers, Western Central Association of Stove Manufacturers, and Quincy Freight Bureau; *R. D. Sangster* and *G. E. Flanders* for Kansas City Bolt & Nut Company; *Oscar F. Bell* for Crane Company; *Emil L. Fuhrmann* for Wisconsin Bridge & Iron Company; and *B. W. Edwards* for Manufacturers Association of Chicago Heights, Ill.

#### REPORT OF THE COMMISSION.

The tentative report of the examiner which was served upon the parties and made the basis of the oral argument before the Commission, contained the following statement of the facts:

#### INVESTIGATION AND SUSPENSION DOCKET NO. 961.

We have before us in this proceeding the proposal of the roads in western trunk line territory to increase or cancel practically all their commodity rates on articles of iron and steel manufacture. The rates apply principally from Chicago and Peoria, Ill., St. Louis and Kansas City, Mo., Minneapolis, St. Paul, and Duluth, Minn., and Mississippi River crossings, to various western destinations. Incidentally the joint through commodity rates on cast-iron pipe from Birmingham, Ala., and other southeastern points to western trunk line territory, which are based on Memphis, and joint through rates on various iron and steel articles from points in central freight association territory to Minneapolis, St. Paul, and Duluth, which are based on the Chicago combination, are also proposed to be increased to the extent of the increases proposed in the factors west of the gateways named. The schedules were filed to become effective on various dates in November and December, 1916, and January, 1917, but they were suspended by the Commission until September 10, 1917, and later dates. They have now been voluntarily suspended by the carriers until January 1, 1918, in accordance with an understanding reached when the question of procedure to be followed in *The Fifteen Per Cent Case*, 45 I. C. C., 303, was under consideration. The protests against the proposed rates were general. They came from producers, both large and small, and from jobbers, consumers, industrial and commercial traffic organizations, and state commissions. Except as otherwise noted rates are stated per 100 pounds.

The general situation should be understood before individual rates are considered. A commodity rate of 14 cents from Chicago to St. Paul, as will be seen later, has been largely responsible for other commodity rates in western trunk line territory. This rate is of course published from and to points ordinarily grouped with Chicago and St. Paul. It applies on bars, plates, sheets, structural shapes, cast and wrought pipe, telegraph and telephone poles, tin plate, and other articles usually included in the iron and steel lists. Respondents propose in the suspended schedules to cancel this rate and to apply on all the

articles in question the fifth-class rate of 20 cents provided by western classification.

For many years the rates on iron and steel articles from Chicago to St. Paul have been depressed by the rates applying to St. Paul via the lake-and-rail lines from Cleveland, Ohio, Erie, Pa., and Buffalo, N. Y., hereinafter referred to as the Lake Erie ports. The only rail haul in connection with those routes is that west of Duluth, Minn., for a distance of about 150 miles. The constant policy of the rail lines from Chicago has been to keep manufacturers at that place on a rate parity with their competitors at the Lake Erie ports. The lake-and-rail rates from the Lake Erie ports to St. Paul have ranged from 10 to 13.75 cents. The all-rail rates from Chicago during the seasons of navigation have ranged from 10 to 14 cents, and have fluctuated with the lake-and-rail rates. Formerly the rates from Chicago via rail were sometimes increased to 15 cents when navigation closed and reduced again in the spring; but this practice was later discontinued because the rail lines operating west from Duluth had built large warehouses at that point, which were stocked during the season of navigation, and from which shippers could distribute and secure the benefit of the lake rates throughout the year. A rate of 14 cents has been maintained continuously by the rail lines from Chicago to St. Paul since 1908. In addition to what may be called the market or market-and-carrier competition from the Lake Erie ports, as above outlined, the rail lines from Chicago have had to reckon with the carrier competition of the lake-and-rail lines from Chicago to St. Paul. Owing to the unusual maritime conditions which now exist the carrier competition from Chicago is merely potential, but when boats were available a large tonnage was shipped by lake. Transportation from Chicago to Duluth by lake could then be had for about 7 cents per 100 pounds, which included terminal services at both ends of the line. The rate from Duluth to St. Paul was 7.5 cents.

The rate from Chicago to Duluth is related to the rate from Chicago to St. Paul. The present commodity rate from Chicago to Duluth on iron and steel articles is 16.5 cents, or 2.5 cents higher than from Chicago to St. Paul. The rates from the Lake Erie ports to Duluth have generally been 4 cents less than from those points to St. Paul, but the rail lines from Chicago to Duluth have not felt that they were able to meet the rates from the Lake Erie ports. The rail haul from Chicago is considerably greater to Duluth than it is to St. Paul. Respondents propose in the suspended schedules to cancel their commodity rate of 16.5 cents to Duluth and to apply their fifth-class rate of 22 cents.

There are at present commodity rates on stoves and such related articles as ranges, furnaces, and stove furniture, from Chicago to St.

Paul and Duluth, which are made on the basis of a differential of 2.5 cents over the rates on the other iron and steel articles mentioned. Stoves and the related articles are highly manufactured products, of comparatively light loading, and more liable to damage than other iron and steel articles. The western classification basis of fifth class is proposed in the suspended schedules.

The Chicago-St. Paul rate has spread its influence to quite a large territory west of Chicago and the Mississippi River. It is applied to intermediate points, not only via the direct routes, but also via the more circuitous routes through Iowa. It is considerably lower than the fifth-class rates from Chicago to these Iowa points and has directly and indirectly depressed the rates throughout the larger portion of the state. The rates to western Iowa beyond the influence of the Chicago-St. Paul rate are generally on the fifth-class basis, except that commodity rates on cast and wrought pipe from Chicago and the Mississippi River to the Missouri River, which are less than fifth class, are apparently reflected to intermediate territory. In accordance with the basis applied on traffic in general commodity rates on iron and steel articles from Peoria and Quincy, Ill., to St. Paul were made the same as from Chicago and those from St. Louis were made 5 per cent higher. The rates from Kansas City were made with relation to the rates from St. Louis. All of these rates, like those from Chicago, affected the rates to Iowa points. Proportional commodity rates from the upper Mississippi River crossings to the Iowa points, applicable on traffic originating east of the Indiana-Illinois state line, were made on the basis of a differential of 5 cents under the rates from Chicago. Demands from the owners of a new plant at Steelton, near Duluth, have brought about substantially the same level of rates from that point as applies from Chicago. The suspended schedules propose the cancellation of all these commodity rates and the application of the fifth-class rates instead. Representative rates and the amounts of the increases will be shown later.

Although in the schedules under suspension the carriers, as a rule, proposed the fifth-class rates as reasonable for iron and steel articles, they stated at the hearing that they preferred for competitive reasons not to apply the fifth-class rates from Chicago to St. Paul, Duluth, and several of the points grouped therewith to which the lake or the lake-and-rail lines from the Lake Erie ports then had rates lower than the fifth-class rates from Chicago. The rates from the Lake Erie ports on iron and steel articles other than stoves and the related commodities previously referred to were, at the time of the hearing, 16.25 cents to St. Paul and 12.25 cents to Duluth. On stoves and the related commodities the rates were 22 cents to St. Paul and 15 cents to Duluth. In order to protect the steel interests on their lines, particularly those in the Chicago district, and to secure for



themselves a portion of the traffic that would otherwise move from the Lake Erie ports, respondents stated at the hearing that they desired to publish a commodity rate of 16.5 cents on the various iron and steel articles, except stoves and the related commodities, from Chicago and certain points grouped therewith to St. Paul and Duluth, and a rate of 19 cents on stoves and the related commodities. The publication of these rates and an approval of fifth-class rates to intermediate points would bring about a departure from the long-and-short-haul rule. Respondents at the hearing accordingly filed an application, our No. 11051, by which they seek authority to publish the above-mentioned commodity rates from Chicago and points grouped therewith to St. Paul, Duluth and points taking the same rates on traffic from the Lake Erie ports, and at the same time to charge the fifth-class rates at intermediate points. The application is opposed by the Iowa cities because of the advantage which would accrue to St. Paul and Duluth, but it is strongly supported by manufacturers in the Chicago district, who introduced much testimony as to the actual competition from the Lake Erie ports and the potential competition from the Chicago district. Companies having plants both in the Chicago district and at the Lake Erie ports would ship from the latter much of the tonnage which is now moved from the Chicago district or might fit their ore boats for the carriage of their manufactured products from the Chicago district. The competition of the new plant at Steelton, near Duluth, is also a factor which must be considered, although at present substantially its only output is bar iron. Since the hearing the rate situation has been changed by the publication of rates from the Lake Erie ports of 21 cents to St. Paul and 16 cents to Duluth on iron and steel articles, except stoves and the related commodities, and 26 cents to St. Paul and 19 cents to Duluth on the excepted commodities. The new rates from the Lake Erie ports are the result of *The Fifteen Per Cent Case*, 45 I. C. C., 303. A rate of 17.9 cents has been maintained from the Lake Erie ports to St. Paul by the Northwestern Steamship Company in connection with the "Soo line" via Gladstone, Mich., since April 27, 1917. In view of the changed situation and the conclusion we shall reach respecting the reasonableness of the proposed rates the application will be denied. This is of course without prejudice to different action should the situation again change.

Respondents contend that fifth class is the normal rate for iron and steel articles and say that they should have taken steps long ago to confine the effects of the competition to the places where it was felt. There seems to be no room for serious doubt that the whole commodity rate structure above described had its origin in the depression of the Chicago-St. Paul rate. But proof that rates are



the result of competitive forces does not necessarily mean that they are too low, for competition may sometimes be needed to keep rates at a reasonable level. We shall therefore look to the other evidence of record in order to determine whether respondents have justified the rates they propose. The cancellation of these commodity rates, however, would harmonize the western rate situation. There are substantially no other commodity rates on iron and steel articles in western trunk line territory, except a few with which we shall deal later in the report, and which have grown out of special conditions.

Iron and steel articles are rated fifth class in the official classification, and the record shows that the rates charged thereon in central freight association territory are substantially on that basis, except that cast-iron pipe is generally moved at commodity rates considerably lower than the fifth-class rates. Respondents contend that if the official classification basis is proper east of Chicago and the Mississippi River there is no reason why the western classification basis should not be deemed reasonable in western trunk line territory. They compare some of the present and proposed rates with rates applying on iron and steel articles within central freight association territory. We have selected a few and show them in the table below:

To—	Distance (miles).	Rates from Chicago to points named in first column.		Rates in effect at the time of the hearing for distances equal to those shown in second column to points in C. F. A. territory from producing points therein as follows.		
		Present.	Fifth class (pro- posed).	Cleveland, Ohio.	Youngs- town, Ohio.	Pitts- burgh, Pa.
St. Paul, Minn.....	400	14	20	17.4	16.9	18.6
Rochester, Minn.....	346	14	20	15.9	16	17.3
Mankato, Minn.....	422	16	22	19.5	16.9	18.7
Washington, Iowa.....	248	14	18	13.7	13.4	14.5
Mason City, Iowa.....	312	14	21	15.7	14.8	15.9
Waterloo, Iowa.....	272	14	20	14.5	13.8	15
Cedar Rapids, Iowa.....	219	14	18	13	12.8	13.9
Des Moines, Iowa.....	358	17.5	21	16.6	16.2	17.6
Ottumwa, Iowa.....	280	14	19	14.5	14.1	15.3
Red Oak, Iowa.....	443	24	27	19.5	18.6	18.9
Fort Dodge, Iowa.....	373	18.5	23	16.9	16.5	17.8

The rates shown above from Chicago are representative of the rates from Chicago, Peoria, and St. Louis to various points in the states shown. Some of the rates at present in effect are higher and some are lower than those for equal distances in central freight association territory in effect at the time of hearing. The proposed rates as will be seen are considerably higher. Since the hearing the rates in central freight association territory, except on pipe, have been

increased about 15 per cent. *C. F. A. Class Scale Case*, 45 I. C. C., 254, and *The Fifteen Per Cent Case*, *supra*. The difference in conditions in the two territories is generally understood. Respondents offered evidence with respect to that matter, but we need not go into it in detail. Reference may be made, however, to Appendix No. 1 to this report, which shows certain data offered by respondents respecting traffic density.

The fifth-class rate from Chicago to the Missouri River is 27 cents, and the distance about 496 miles. Respondents compare this rate with the fifth-class rate of 18.9 cents in effect at the time of the hearing from Chicago to the western termini of the eastern trunk lines for a distance of about 475 miles. They offer this comparison as evidencing the normal difference in rate levels. The fifth-class rate from Chicago to the Missouri River is over 40 per cent higher than the rate from Chicago to the western termini of the eastern trunk lines, and respondents, taking the difference in fifth-class rates as representative of the normal difference in conditions, contend that any rate on iron and steel articles in western trunk line territory which does not exceed by more than 40 per cent the rate for an equal distance in central freight association territory must be a reasonable rate. It will be seen from the above table that in no case is the rate proposed out of keeping with the standard deduced from comparing the Chicago-Missouri River rate with the Chicago-western termini rate, and that in most cases the proposed rate is much more favorable to the shipper.

Iron and steel articles are of considerably greater value now than they were a few years ago. Respondents also ask us to take into account the fact that they are paying much higher prices for materials of iron and steel manufacture than formerly.

Protestants contend that even assuming the official classification basis of fifth class to be reasonable in central freight association territory, it does not follow that the western classification basis of fifth class would be reasonable in western trunk line territory, where the class rates are said to be so high as to require a large number of commodity rates on various articles. They suggest that to permit the cancellation of the commodity rates on iron and steel while commodity rates are continued on other articles would be to require iron and steel to contribute in an undue proportion to the revenues of the carriers.

The heavy car loading of iron and steel and the consequently large per car earnings are put forward by protestants as the principal transportation reasons why there should be no increase in the present rates. The National Tube Company, having plants at various eastern points, is making a specialty of loading cars to the maximum. The eastern lines have several thousand gondola cars with a marked capacity of 140,000 pounds. The National Tube Company often

loads such cars with more than 150,000 pounds of wrought pipe or tubing. Some of these shipments go to points in western trunk line territory to which the proposed rates apply. The record shows many cars of iron and steel articles from various manufacturers which were very heavily loaded. But we are here concerned principally with the normal or average load. The car loading of iron and steel, as shown by the records of five important western lines for the years 1914, 1915, and 1916, is as follows:

Commodity.	Number of cars.	Total weight.	Average weight per car.
		<i>Tons.</i>	<i>Pounds.</i>
Merchant iron, bars, etc.....	130,996	3,961,673	60,400
Structural iron.....	15,902	487,425	55,000
Rails and fastenings.....	21,786	783,471	72,000
Pipe (cast and wrought).....	53,941	1,440,121	53,480

It will be observed that figures are not shown separately for cast and for wrought pipe. One of the principal protestants gives its average loading for wrought pipe as 75,000 pounds, but that is probably above the average for all shippers. Cast pipe averages considerably less. The weighted average for all iron and steel articles in western trunk line territory is apparently not far from 60,000 pounds. Some of the protestants would have no great objection to a material increase in the minimum carload weights which are now far below the average weights.

Articles of iron and steel manufacture are among the heaviest loading commodities transported by carriers, and the evidence abundantly shows that this traffic under the present rates produces relatively large car-mile revenue. Iron and steel articles afford the carriers desirable traffic. The susceptibility to damage in transportation is practically negligible. There is a very considerable tonnage handled in box cars, which cars may be returned loaded. The movement is quite regular. Special or expedited service is not required. Many commodities with classification ratings as high or higher are accorded commodity rates and do not load as heavily. The great volume of tonnage in western trunk line territory is moved on commodity rates.

#### PROPRIETY OF THE CHICAGO-ST. PAUL RATE.

The proposed increase from 14 to 20 cents in the Chicago-St. Paul rate amounts to about 43 per cent. The same rate applies to Minneapolis. The Minneapolis Traffic Association undertook to prove that any rate in excess of 14 cents is unreasonable. It offered in evidence the following statement comparing the rates and earnings on freight of the same or higher classes. All the earnings are com-

puted on the basis of the minimum weight. The comparisons might mean more if the average loading of the various commodities had been known and used.

Commodity.	Rate.	Minimum weight.	Earnings per car.	Class rate applicable.
	<i>Cents.</i>	<i>Pounds.</i>		
Alumina, sulphate of.....	15.5	40,000	\$62.00	Fifth.
Bags or bagging (burlap and jute).....	14.5	30,000	43.50	Fourth.
Beer.....	17	30,000	51.00	Fifth.
Bottles, glass.....	17.5	30,000	52.50	Do.
Contractor's dump cars.....	16.5	30,000	49.50	A.
Sirup.....	17	40,000	68.00	Fifth.
Glycerine (crude).....	16	40,000	64.00	Do.
Iron and steel articles:				
Present.....	14	36,000	50.40	Do.
Proposed.....	20	36,000	72.00	Do.
Live stock:				
Cattle.....	20	22,000	44.50	
Hogs.....	20	17,000	34.00	
Machinery, hoisting.....	17	30,000	51.00	A.
Matches.....	17.5	30,000	52.50	Fourth.
Meats, fresh.....	18	20,000	36.00	Third.
Packing-house products.....	16	26,000	41.60	Fifth.
Oil, linseed.....	15	26,000	39.00	Do.
Paper (not printed):				
Blotting, cardboard, printing (value not exceeding 5 cents per pound).....	14.5	36,000	52.20	Do.
Building and roofing, strawboard.....	10	40,000	40.00	Do.
Refrigerator material (collapsible iron).....	17.5	36,000	63.00	Fourth.
Starch.....	15	36,000	54.00	Fifth.

Taking 60,000 pounds as the average loading, the per car earnings from Chicago to St. Paul under the present rate of 14 cents are \$84. The average distance for all the lines between those points is about 440 miles. The car-mile earnings are approximately 19 cents. At the 20-cent rate proposed as reasonable the car-mile earnings would be nearly 28 cents. The car-mile yield on all traffic handled on their systems by the six important Chicago-St. Paul lines is given as 13.7 cents. Respondents, in this connection, show that sugar, canned goods, window glass, and dried peas and beans move at the fifth-class rate of 20 cents, and they assert that the per car loading ranges from 40,000 to 50,000 pounds. Considering the fact that the cars used for iron and steel traffic must in many cases be returned empty, the net returns thereon to the carriers at the 20-cent rate would probably not be very different from those on the five commodities above named.

No increase is proposed in the rate from Chicago and related points to Winona, Minn., and La Crosse, Wis. The two last named points compete with Minneapolis in distributing into the surrounding territory. On most iron and steel articles the rate from Chicago to these points is 11 cents, or the same as the intrastate rate from Milwaukee, Wis., to La Crosse. The rate from Chicago is made in view of the competitive conditions created by the intrastate rate. Respondents say that they hope to secure the authority of the Wisconsin Railroad Commission to increase the rate from Milwaukee,

which would permit them to bring up their interstate rate to the fifth-class basis. The competition of Chicago with Milwaukee is not a valid reason for holding down the rate from Chicago to Winona and La Crosse to the detriment of Minneapolis.

No increase is proposed in the rate from Chicago to St. Louis and other west-bank Mississippi River cities. The commodity rate from Chicago to St. Louis is 9.5 cents. The fifth-class rate is 18.5 cents. From Chicago to Dubuque the commodity rate is 8.4, while the fifth-class rate is 16.1 cents. These cities also compete with Minneapolis in distributing to surrounding territory. The record is not clear, but it is probable that the Illinois state rates to the east-bank points have deterred the carriers from proposing increases in the rates to the west-bank cities.

A considerable amount of evidence was also offered by the Minneapolis Traffic Association to show the extent to which the proposed increase in the rate from Chicago would impair the ability of Minneapolis to distribute at less-than-carload rates. We will not go into that, for it has little if any bearing upon the question before us.

#### RATES TO IOWA POINTS.

The Board of Railroad Commissioners for the state of Iowa vigorously opposes any increase in the rates to points in that state. The present and proposed rates applicable on the general list of iron and steel articles from Chicago, and also from the Mississippi River on traffic originating at points east of the Indiana-Illinois state line, to various points in Iowa are shown in Appendices Nos. 2 and 3 to this report. Our particular attention is directed to the heavy increases proposed. In many cases they range between 20 and 30 per cent, and are in some cases over 50 per cent. These rates are selected as representative. Similar increases are proposed in the rates from Peoria, St. Louis, Minneapolis, St. Paul, and other points. The present rates from Chicago and the Mississippi River to points as far west as Fort Dodge and Des Moines represent increases ranging from 1 to 1.5 cents permitted in *Rates on Iron and Steel Articles*, 30 I. C. C., 337. The increases there permitted were proposed by the carriers with a view to bringing the rates into line with the Chicago-St. Paul rates.

#### RATES FROM KANSAS CITY.

The Kansas City Bolt & Nut Company protests against the disturbance of the present relationship between the Kansas City and the St. Louis rates to the Iowa points and to St. Paul and Duluth, and incidentally the relationship between the Kansas City and the Chicago rates. The rate difference between the competing points, even if only a few cents, is a large item in the business of this protestant.

the local fifth-class rate, which is 22 cents, and 2 cents less than the proportional fifth-class rate of 20 cents applicable on traffic from points east of the Indiana-Illinois state line. From Chicago and Memphis the proposed rates are 4 cents less than the fifth-class rates, which are 27 cents. The rates charged on other iron and steel articles from and to these points are fifth class.

The record contains a tabular statement showing the history of the rates on pipe since 1895. The history prior to 1907, when rebating was rife, for obvious reasons is not of much value. The rates from St. Louis to Kansas City, taken as representative, since 1907 have ranged between 10 and 13.5 cents. The present rate of 13.5 cents has been maintained since 1909.

If the difference between class-rate levels in central freight association and western trunk line territories may be taken as representative of transportation conditions generally, the proposed rates are not relatively high. The fifth-class rate from Chicago to the Missouri River is 27 cents. From Scottdale, Pa., to Chicago, for a similar distance, the fifth-class rate at the time of the hearing was 20.9 cents. The commodity rate proposed on both cast and wrought pipe from Chicago to the Missouri River is 23 cents, or 4 cents less than the fifth-class rate. From Scottdale to Chicago at the time of the hearing the commodity rate on wrought pipe was 20.4 cents, 2.5 cents less than the fifth-class rate; and the commodity rate on cast pipe, reduced to a per 100-pound basis, was 16.3 cents, or 4.1 cents less than the fifth-class rate.

Respondents compare the rates on pipe with the rates from and to the same points on various commodities, including other iron and steel articles. In analyzing the rates they use a distance of 325 miles from the Mississippi River to the Missouri River. The comparisons are shown in the following table:

*From Mississippi River to Missouri River.*

Commodities.	Contents.				Car and contents.		
	Average loading (tons).	Rate per 100 pounds.	Total car earnings.	Mills per ton-mile.	Gross weight (tons). <sup>1</sup>	Mills per ton-mile.	Car-mile earnings in cents.
Iron pipe (present).....	24.5	13.5	\$66.15	8.3	42.5	4.8	20.4
Iron pipe (proposed).....	24.5	18	88.20	11.1	42.5	6.4	27.1
Machinery and parts, class A...	18	24.5	88.20	15.1	36	7.5	27.1
Agricultural implements, class A	15	24.5	73.50	15.1	33	6.8	22.6
Beans, peas, dried, fifth class...	20.5	22	90.20	13.5	38.5	7.2	27.7
Canned goods, fifth class.....	23.5	22	103.40	13.5	41.5	7.7	31.8
Iron, structural, bar, band, and sheet, fifth class.....	28	20	94.00	12.3	41.5	6.9	20
		22	123.20	13.5	46	8.2	37
		20	112.00	12.3	46	7.5	34.5
Iron wire and nails, fifth class...	21	22	92.40	13.5	39	7.3	28.4
		20	84.00	12.3	39	6.6	26

<sup>1</sup> Based on average empty car weighing 18 tons.

<sup>1</sup> Proportional rate.



The proposed rates on pipe are lower than on any of the other commodities shown. In most cases the earnings also are lower.

The rates and earnings on pipe are compared by one of the protestants with the earnings on other commodities between the Mississippi and the Missouri rivers, as shown in the table below. Protestant points out that the earnings on pipe even under the present rates are greater than on any of the other commodities. But it uses a distance of 306 miles instead of 325 miles.

	Average weight, carload.	Rate.	Earnings (per car).	Earnings, car-mile.
	<i>Pounds.</i>	<i>Cents.</i>		<i>Cents.</i>
Barytes.....	64,000	12	\$76.80	25.1
Brick.....	80,000	7.5	60.00	19.6
Cinders.....	<sup>1</sup> 85,100	165	62.70	20.5
Clay.....	76,000	7.5	57.00	18.6
Soft coal.....	<sup>2</sup> 78,000	190	70.20	22.9
Corn.....	66,000	10.75	70.95	22.2
Gravel.....	80,000	11	88.00	28.8
Ground iron ore.....	66,000	12	79.20	25.9
Pig iron.....	<sup>1</sup> 78,400	196	68.60	22.4
Sand.....	84,000	8	67.20	22
Slag.....	76,000	11	83.60	27.3
Stone.....	80,000	11	88.00	28.8
Wheat.....	72,000	11.75	84.60	27.6
Scrap iron.....	66,000	10	66.00	21.6
Sulphur.....	46,000	17	78.20	25.6
Tar.....	52,000	10	52.00	17
White-pine lumber.....	46,000	12.5	57.50	18.8
Cast-iron pipe.....	49,000	13.5	66.15	21.6
Wrought pipe.....	68,000	13.5	91.80	30
Proposed:				
Cast-iron pipe.....	49,000	18	88.20	29
Wrought pipe.....	68,000	18	122.40	40

<sup>1</sup> Per gross ton.

<sup>2</sup> Per net ton.

The western classification rating on concrete pipe and reinforced concrete pipe is class E. The minimum weight is 26,000 pounds on the former and 30,000 pounds on the latter. The local class E rate from the Mississippi to the Missouri River is 11 cents and the proportional rate 10 cents. The actual loading of these two kinds of pipe is not shown.

The Commercial Club of Omaha and the Metropolitan Water District of the City of Omaha, Nebr., oppose any increase in the rates on pipe to the Missouri River. At the hearing counsel for these protestants noted an exception to the testimony given by the general freight agent of the Missouri Pacific Railway, on behalf of his own and other lines, on the ground that it was admitted to be hearsay in so far as it concerned lines other than the Missouri Pacific. We are not prepared to require a strict adherence to the rules of evidence in proceedings before this Commission. It may be, however, that some of the evidence should be cast aside, but in any event, we may make such finding and take such action with respect to the rates on pipe as the whole record and general considerations appear to warrant. The above-named protestants further contend that even as applied



to the Missouri Pacific the testimony of the witness referred to is too meager to support an approval by this Commission of the proposed rates on pipe.

PIPE TO IOWA.

Pipe is included in the general iron and steel list, but in some cases there are specific rates on that commodity to points in Iowa which are slightly different from those applying on the general list. These, as already indicated, are apparently reflections from the commodity rates on pipe to the Missouri River. The rates on pipe from Chicago and the Mississippi River to Iowa points are shown in Appendices Nos. 5 and 6.

PIPE TO KANSAS.

The commodity rates on pipe from Chicago and the Mississippi River to points in Kansas are made with relation to the rates to the Missouri River, and the measure of the increases proposed is the same as to the Missouri River, 4½ cents. The following table shows the present and proposed rates, as well as the fifth-class rates, from St. Louis to several Kansas points:

From St. Louis to—	Present rates.	Proposed rates.	Fifth-class rates.
Kansas City.....	18½	18	22
Topeka.....	23½	28	28
Chanute.....	23½	28	32
Salina.....	33½	38	45
Eldorado.....	33½	38	46½
Angusta.....	33½	38	48½
Wichita.....	33½	38	51
Hutchinson.....			
Arkansas City.....			
Great Bend.....	45½	50	59
Ardell.....	52½	52½	61

The fifth-class rates shown above are those established pursuant to our decision in *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673. In *The Iron and Steel Cases*, 36 I. C. C., 86, 101, we held that the fifth-class rates from St. Louis to Topeka, Wichita, and Hutchinson, as applied to iron and steel traffic generally, were not shown to be unreasonable or unduly prejudicial.

There is a commodity rate of 52.5 cents from the Mississippi River to Colorado common points on iron and steel articles, including pipe, and this rate fixes the maximum that may be charged to points in western Kansas. The commodity rates on pipe from the Mississippi River to points in Kansas grade up from Kansas City until Ardell, Kans., is reached, where the 52.5-cent rate, blanketed back from Colorado common points, is met. The country west of Ardell to Colorado common points is sparsely populated. Ardell is about 150 miles east of the Colorado-Kansas state line and about

300 miles east of the Colorado common points. On iron and steel articles other than pipe there are no commodity rates from Chicago and the Mississippi River to these stations except in a few cases where the rates to Colorado, Texas, and Oklahoma points apply as maxima. The rates to Texas and Oklahoma are said to be made with reference to the rates from Pittsburgh to the southwest via rail-ocean-and-rail lines through Gulf ports.

The Public Utilities Commission of the state of Kansas opposes any increases in the rates on pipe to points in Kansas, and also takes the position that the present and proposed rates are improperly adjusted. The Kansas commission appears at the request of Kansas shippers and because the commodities on which the increases are proposed enter into the construction of public utilities, such as gas, oil, and water-works properties, and become part of the permanent investment therein, upon which the owning corporations are allowed a return. Any increases in the rates which such corporations must pay enter into the capital investment and to that extent increase the rates that must be charged the public.

The Kansas commission contends that if there is to be any increase, the Colorado rate of 52.5 cents, which it accepts as reasonable, should, instead of being blanketed as far back as Ardell, be graded down immediately east of the Colorado common points and the rate to Kansas City graded up more moderately until the two scales meet and blend into each other. The rates to points in Kansas yield considerably more per ton-mile than does the rate to Kansas City. This is due to the fact that distance has not been recognized as controlling. The lighter traffic density in Kansas is primarily responsible for the departure from the rule that ton-mile earnings should decrease with distance. The table appearing below illustrates this feature of the rate situation:

*Proposed rates in mills per ton-mile on iron pipe, carload.*

From St. Louis, Mo., to—

Kansas City, Mo.....	13
Topeka.....	16.28
Emporia.....	17.95
Hutchinson.....	15.32
Larned.....	18.55
Dodge City.....	17.05
Garden City.....	15.77
Coolidge.....	14.32
Manhattan.....	17.68

The Kansas commission contends that there is no warrant for so much disparity, especially with respect to the rates to points in eastern Kansas as compared with those to Kansas City. Some

evidence was offered to show the difference in traffic density, but the conclusions to be drawn from it depend largely upon the extent to which it is analyzed. According to figures submitted by this protestant, the present rates on pipe to points in Kansas average about 76 per cent of the fifth-class rates, and those to points in Oklahoma, Arkansas, Texas, Montana, and Utah are still lower as compared with the fifth-class rates. The proposed rates appear to average about 85 per cent of the fifth-class rates. The present rates on pipe to Kansas points appear to be but slightly lower, as compared with rates on other iron and steel articles, than to points in the other states named.

#### PIPE GENERALLY.

The commodity rates on pipe generally are said by respondents to be in the nature of concessions to municipalities and public service corporations. We have found that the intense competition of the carriers for the heavy tonnage had much to do with their establishment.

In *The Iron and Steel Cases, supra*, we said:

Wrought and cast iron pipe move in large quantities and there has been intense competition among western carriers for this traffic. As a consequence, the rate on these articles in the territory west of the Mississippi River has been less than fifth class for many years. Cast-iron pipe early took a commodity rating, and as the wrought-iron industry developed wrought pipe was given the same rate as cast-iron pipe.

As already indicated, from Chicago and the Mississippi River to the twin cities and Duluth and to the related points in Iowa, Minnesota, and Wisconsin the rates proposed on pipe, as well as on other iron and steel articles, are full fifth class. Respondents' reasons for not proposing fifth-class rates for pipe to the Missouri River and points in Kansas are not fully disclosed, but they say that one of the reasons that deterred them from making such a radical increase was their desire first to allow the trade to become accustomed to the more modest increase which is here proposed. It is urged by respondents that iron pipe is the best thing on the market for the purposes for which it is used; that it does not ordinarily come into competition with other articles; and that it can well bear the higher rates proposed.

Respondents say that the present commodity rates on pipe are unduly preferential to that commodity and unduly prejudicial to other traffic and that the proposed rates to an extent remedy this situation. In *Iron and Steel to Colorado Points*, 41 I. C. C., 76, we fixed a reasonable rate from St. Louis to Colorado common points on iron and steel articles generally. The transportation conditions affecting pipe, particularly wrought pipe, did not appear to be substantially different from those which attended the movement of the other articles.

CAST vs. WROUGHT PIPE.

The United States Cast Iron Pipe and Foundry Company and affiliated manufacturers of cast-iron pipe produce principally what is known as pressure pipe, which is used for the transmission of water and gas. Most of their output is sold to municipalities and public service corporations. These shippers oppose any increases in the rates on pipe generally, or on iron and steel articles generally, in so far as applied to their particular commodity. Their plants are located east of the Mississippi River, and the present and proposed rates from the river are factors in the through rates. They take the position that even assuming the proposed rates on pipe generally and on iron and steel articles generally are reasonable, there are reasons why these rates as applied to cast-iron pipe should be continued on the present basis. The normal average price for cast-iron pipe f. o. b. Birmingham, according to the record, is not over \$23 per ton, but other articles of iron and steel manufacture are said to average in value from \$30 to \$100 per ton f. o. b. mills. It is contended that the carriers east of the Mississippi River have given due recognition to the low value and to other transportation conditions by providing rates on cast-iron pipe usually less than those on other iron and steel articles. The following table shows how much lower than fifth class the rates on cast-iron pipe are in official classification territory. These rates are those in effect at the time of the hearing and are cited by the protestants as typical.

	Per net ton.			Per net ton.	
	Pipe.	Fifth class.		Pipe.	Fifth class.
From Scottdale, Pa., to—			From Addyston, Ohio, to—		
Pittsburgh, Pa.....	\$0.95	\$1.68	Cleveland, Ohio.....	\$2.10	\$2.84
Buffalo, N. Y.....	2.10	2.84	Detroit, Mich.....	2.10	2.84
Boston, Mass.....	3.48	4.28	Chicago, Ill.....	2.36	3.16
Baltimore, Md.....	2.10.	3.18	St. Louis, Mo.....	2.36	3.16

Instances are given in which these companies have loaded very heavily, sometimes to as much as 110,000 pounds per car, but they give their average load as between 60,000 and 70,000 pounds. Cast-iron pipe costs much less per ton than wrought pipe, but cast-iron pipe is so much heavier that the cost per lineal foot is generally greater than the cost per foot of wrought pipe. The two kinds of pipe are competitive with each other. These points are brought out by the protestants to sustain their contention that cast-iron pipe can not well bear as high a rate as wrought pipe. The increase in rate would increase the delivered cost per foot a great deal more on cast-iron pipe than on wrought pipe. Cast-iron pipe is the lowest valued manufactured iron article, being next in value at the mills to the lowest

grade of pig iron. It is cast direct from the pig. The material for wrought pipe must pass through several stages of manufacture before it can be made into the finished article. Subsidiaries of the United States Steel Corporation which manufacture wrought pipe contend for the same rate on both kinds of pipe.

The Central Foundry Company and other manufacturers of what is known as cast-iron soil pipe, which is used for plumbing or sanitary purposes, oppose any increase in the rates and stand with the subsidiaries of the United States Steel Corporation in asking that there be no distinction drawn, so far as the rate is concerned, between the two kinds of pipe. Practically all of their output moves in box cars. It does not load as heavily as pressure pipe or wrought pipe. Ninety per cent of their carloads weigh less than 50,000 pounds, but they would have no great objection to an increase in the minimum weight to that figure.

RAILWAY MATERIAL.

The commodity rates on railway material proposed to be increased are said to have been the outgrowth of rates originally published to represent the divisions of through rates which the carriers applied before the enactment of the Elkins law in lieu of tariff rates on traffic hauled for the account of each other. The following statement shows some of the changes proposed in the rates from the Mississippi River:

To—	Rates on rails per ton of 2,240 pounds.				Rates on other rail- way material per 100 pounds.	
	Prior to May 28, 1914.	Present rates.	Proposed.		Present.	Proposed.
			Via Union Pacific.	Via other lines.		
Kansas City, Mo.....	\$1.75	\$2.24	.....	<sup>1</sup> \$2.50	\$0.12	\$0.22
Pittsburg, Kans.....	1.75	2.37	.....	3.25	.16	.28
Topeka, Kans.....	1.75	2.71	\$3.25	3.25	.175	.28
Manhattan, Kans.....	1.75	2.98	3.50	3.50	.19	.36
Junction City, Kans.....	1.80	2.98	4.51	3.25	.195	.42
Salina, Kans.....	2.08	3.14	5.215	3.405	.23	.45
Belleville, Kans.....	1.95	2.98	5.41	.....	.195	.44
Ellis, Kans.....	2.94	( <sup>2</sup> )	6.225	.....	.27	.60
Oakley, Kans.....	2.94	( <sup>2</sup> )	6.24	.....	.31	.61
Omaha, Kans.....	1.75	2.98	3.73	.....	.18	.35
Ellsworth, Kans.....	2.22	3.34	5.238	3.59	.24	.54
Salmon, Kans.....	1.95	3.07	5.065	3.335	.22	.445

<sup>1</sup> Proportional rate.

<sup>2</sup>Commodity rate withdrawn.

The commodity rates on track fastenings and other railway material from Kansas City to Iowa points and to St. Paul and Duluth are also proposed to be canceled and the fifth-class rates applied, which would result in heavy increases.

There is very little evidence of record in reference to these commodities.

Some of the proposed tariffs name increased rates per net ton on mixed carloads of rails and fastenings. Respondents conceded at the hearing that the tariffs should be corrected so as to permit the mixture of the two articles. The charges are to be based on the weight of the rails at rates per gross ton, and on the weight of fastenings at rates per net ton.

#### MIXING ARRANGEMENTS.

The present commodity rates, particularly to the Iowa and Minnesota points, permit a liberal mixture of iron and steel articles of various kinds. If the classification basis goes into effect the mixing will be greatly restricted. Respondents stated upon the argument that they would be willing to continue the present mixing arrangement if the application of fifth-class rates were approved.

CLARK, *Commissioner*:

The foregoing statement of facts is adopted and approved. The following conclusions, which differ from those proposed by the examiner, are reached:

#### CONCLUSIONS.

Upon consideration of all the facts of record we are led to the conclusion that respondents have justified the application of fifth-class rates on stoves and related articles which now take the same rates. In *Interior Iowa Cases*, 46 I. C. C., 39, we prescribed maximum proportional class rates from the Mississippi River to interior Iowa points. We think that the use of the fifth-class proportional rates there prescribed has been justified as to shipments of iron and steel articles and pipe from east of the Indiana-Illinois state line, moving on combination rates made on the Mississippi River. In other commodity rates on the articles in the general iron and steel list, including pipe, applying between points in the territory east of the Missouri River, including St. Paul and Duluth, increases up to 90 per cent of the fifth-class rates contemporaneously in effect have been justified, except that no justification has been shown for any substantial change in the relationship as between the commodity rates from Kansas City and St. Louis. Fractions shall be disposed of in accordance with the following rule: Fractions of less than  $\frac{1}{4}$  or .25 to be omitted; fractions of  $\frac{1}{4}$  or .25, or greater, but less than  $\frac{3}{4}$  or .75, to be shown as  $\frac{1}{4}$ ; fractions of  $\frac{3}{4}$  or .75, or greater, to be increased to the next whole figure. The proposed commodity rates on pipe from Chicago, Memphis, and Mississippi River points to Missouri River points have been justified. Increases proportionate to those justified in rates on pipe to the Missouri River have been justified in the rates on pipe to the related points in the territory intermediate to the Missouri River, except that the new rates, other than the proportional rates to interior Iowa cities, above referred to, must not exceed 90 per cent of the fifth-class



rates. There shall be no violation of the long-and-short-haul rule of the fourth section with respect to rates to points in Iowa as compared with those to the Missouri River. No increases have been justified in the rates on pipe to points in Kansas west of the west bank of the Missouri River. If the rates to St. Paul are increased, the rates from Chicago and Milwaukee to Winona and from Chicago to La Crosse must be correspondingly increased in order to prevent undue prejudice to St. Paul. The mixtures now permitted under commodity rates must not be restricted in any case. The rates on railway material are in a chaotic state, and in some cases, at least, appear low, but upon this record we are not prepared to say what increases or readjustment should be made.

The increases here found justified may be reflected in the through rates from points east of Chicago and of the Mississippi River.

The suspended schedules will be ordered canceled. The increased rates found justified may be made effective upon not less than five days' notice.

#### INVESTIGATION AND SUSPENSION DOCKET NO. 1087.

The lines from Birmingham and other producing points in the southeast failed to propose increases in their rates on wrought-iron pipe to western trunk line territory at the time they proposed increases in their rates on cast-iron pipe. Action was not taken by them until after the hearing of the case above reported. The schedules were suspended upon the carriers' request, first until September 9, 1917, and later until March 9, 1918. The increases are the same in amount as the increases in the factors west of the Mississippi River, and respondents have adopted the record in the previous case as the record in this case.

We find the suspended schedules not justified and will order their cancellation. However, upon five days' notice, respondents may increase these rates to the extent of the increases found justified west of the Mississippi River.

COMMISSIONERS ATTCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.



# APPENDIXES.

## APPENDIX No. 1.

*Statement showing total tons revenue freight carried, total tons carried 1 mile, and average haul for eastern and western groups, years ended June 30, 1914 and 1915.*

Name of road.	Year ended June 30, 1914.			Year ended June 30, 1915.		
	Total tons revenue freight carried.	Total ton-miles revenue freight carried 1 mile.	Average haul.	Total tons revenue freight carried.	Total ton-miles revenue freight carried 1 mile.	Average haul.
<b>Eastern group:</b>						
Lake Shore & Michigan Southern.....	38,139,150	5,968,918,216	156.50	17,659,678	2,807,801,185	159.00
Pittsburgh, Fort Wayne & Chicago...	100,539,746	7,782,644,066	77.37	83,093,114	6,394,925,763	76.96
Pittsburgh, Cincinnati, Chicago & St. Louis.....	39,356,800	4,638,057,588	117.85	35,159,103	4,139,351,472	117.73
Baltimore & Ohio.....	69,382,145	12,425,552,828	193.50	64,375,595	12,970,894,074	201.49
Erie (Erie R. R. only)...	37,282,554	6,408,667,050	171.89	35,257,739	6,562,795,002	186.14
New York, Chicago & St. Louis.....	8,628,558	1,884,451,491	218.40	8,401,854	1,872,287,537	222.84
Wheeling & Lake Erie	12,076,785	1,192,862,166	98.77	8,290,099	651,739,754	78.63
<b>Total and average...</b>	<b>306,455,738</b>	<b>41,301,152,815</b>	<b>135.21</b>	<b>252,237,152</b>	<b>35,399,794,777</b>	<b>140.34</b>
<b>Western group:</b>						
Chicago & North Western.....	43,309,643	6,229,944,171	143.85	40,399,215	6,216,280,599	153.87
Chicago, Milwaukee & St. Paul.....	33,007,277	8,079,689,505	244.79	32,959,392	8,185,988,375	248.37
Chicago, Burlington & Quincy.....	32,388,800	8,612,629,607	265.91	31,758,791	8,527,444,254	268.51
Chicago, Rock Island & Pacific.....	21,117,712	4,940,743,852	233.96	22,142,789	5,276,023,458	238.27
Minneapolis & St. Louis.....	5,582,567	850,221,217	152.30	5,901,775	957,544,100	162.25
Chicago Great Western	5,557,858	1,364,626,099	245.42	5,642,764	1,378,504,608	244.39
Minneapolis, St. Paul & Sault Ste. Marie...	12,960,518	2,770,426,099	213.43	12,769,626	2,564,319,455	200.81
Chicago, St. Paul, Minneapolis & Omaha...	8,466,683	1,294,143,291	152.85	8,794,498	1,336,108,267	151.98
<b>Total and average 8 roads.....</b>	<b>162,411,007</b>	<b>34,141,823,442</b>	<b>210.21</b>	<b>160,368,840</b>	<b>34,442,202,210</b>	<b>214.77</b>
Atchison, Topeka & Santa Fe.....	21,540,062	5,898,379,433	273.60	22,955,128	6,347,562,891	267.79
Missouri Pacific (except St. L., I. M. & S.)	12,182,074	2,388,847,411	196.19	12,793,323	2,622,996,187	205.03
Chicago & Alton.....	8,494,526	1,464,671,657	172.63	7,864,283	1,435,351,427	182.51
<b>Total and average, 11 roads.....</b>	<b>204,617,668</b>	<b>43,888,721,942</b>	<b>214.49</b>	<b>203,082,584</b>	<b>44,848,112,715</b>	<b>220.84</b>
Chicago & Erie returns as follows.....	4,871,682	1,019,267,920	209.25	5,402,180	1,129,954,768	201.03

# APPENDIX No. 2.

Table showing, in cents per 100 pounds, present commodity rates on iron and steel articles from Chicago to points in Iowa, compared with fifth-class rates proposed.

To—	Present.	Proposed.	Increase.	
			Cents.	Per cent.
Maquoketa.....	14	15.6	1.6	11.43
New Liberty.....	14	16	2	14.29
Durango.....	14	16.1	2.1	15
Tipton.....	14	17	3	21.43
Cedar Rapids.....	14	18	4	28.57
Ottumwa.....	14	19	5	35.71
Waterloo.....	14	20	6	42.86
Mason City.....	14	21	7	50
Albia.....	17.5	20	2.5	14.29
Des Moines.....	17.5	21	3.5	20
Elkworth.....	17.5	22	4.5	25.71
Centerville.....	17.5	23	5.5	31.43
Emmons-Norman.....	18.5	20	1.5	8.11
Webster City.....	18.5	22	3.5	18.92
Fort Dodge.....	18.5	23	4.5	24.32
Jefferson.....	18.5	24	5.5	29.73
Farmhamville.....	18.5	25	6.5	35.14
Algona.....	19	24	5	26.32
Somers.....	19	25	6	31.58
Woden.....	20	24	4	20
Mason.....	20	25	5	25
Burt.....	21	24	3	14.29
Raisa.....	21	25	4	19.05
Whittemore.....	21	26	5	23.81
Buffalo Center.....	21.5	24	2.5	11.63
Oscarola.....	22	22	.....	.....
Raka.....	22	24	2	9.09
Scranton.....	22	25	3	13.64
Redman.....	22	26	4	18.18
Havelock.....	22.5	26	3.5	15.56
Murray.....	23	23	.....	.....
Germania.....	23	24	1	4.35
Pecahontas.....	23	26	3	13.04
Creston.....	24	24	.....	.....
Cromwell.....	24	25	1	4.17
Corning.....	24	26	2	8.33
Red Oak.....	24	27	3	12.50
Fonda.....	25	26	1	4
Ruthven.....	25.5	26	.5	1.96

APPENDIX No. 3.

Table showing, in cents per 100 pounds, present proportional commodity rates on iron and steel articles from Mississippi River crossings, on traffic originating east of the Indiana-Illinois state line to points in Iowa, compared with fifth-class rates proposed.

To—	Com- modity.	Fifth class. <sup>1</sup>	Increase.	
			Cents.	Per cent.
Waukon.....	9	9	.....	.....
Decorah.....	9	10	1	11.11
Cresco.....	9	10.6	1.6	17.78
Osage.....	9	12.6	3.6	40
Northwood.....	9	15.2	6.2	68.89
Forest City.....	13.5	16.4	2.9	21.48
Algona.....	16.9	16.9	.....	.....
New Hampton.....	9	10	1	11.11
Charles City.....	9	12	3	33.33
Mason City.....	9	13.7	4.7	52.22
Garner.....	13.5	14.9	.8	5.93
Emmetsburg.....	18	18.1	.1	.56
Elkader.....	9	9	.....	.....
West Union.....	9	9.1	.1	1.11
Waverly.....	9	9.7	.7	7.78
Albion.....	9	10.8	1.8	20
Hampton.....	9	12	3	33.33
Clarion.....	13.5	13.7	.2	1.48
Dakota-Humboldt.....	13.5	18.1	4.6	34.07
Pocahontas.....	18	18.7	.7	3.89
Independence.....	8.6	8.6	.....	.....
Waterloo.....	9	9.3	.3	3.33
Grundy Center.....	9	11.1	2.1	23.33
Eldora.....	9	14	5	55.56
Webster City.....	13.5	13.7	.2	1.48
Fort Dodge.....	13.5	14.9	1.4	10.37
Rockwell City.....	16.4	16.4	.....	.....
Vinton.....	9	9	.....	.....
Toledo.....	9	11.4	2.4	26.67
Marshalltown.....	9	12.3	3.3	36.67
Nevada.....	12.5	14	1.5	12
Boone.....	13.5	15.8	2.3	17.04
Jefferson.....	13.5	16.9	3.4	25.19
Marengo.....	8.6	8.6	.....	.....
Montezuma.....	9	9.1	.1	1.11
Newton.....	10.8	10.8	.....	.....
Des Moines.....	12.5	12.6	.1	.80
Adel.....	13.5	17.5	4	.....
Washington.....	7.6	7.6	.....	.....
Sigourney.....	8.6	8.6	.....	.....
Oakalocsa.....	9	9.3	.3	3.33
Fairfield.....	7	8	1	14.29
Ottumwa.....	7	8.6	1.6	22.86
Keosauqua.....	7	8	1	14.29
Bloomfield.....	7	8.4	1.4	20

<sup>1</sup> A readjustment of the proportionate class rates from Mississippi River has been required in *Interior Iowa Cases*, 46 I. C. C., 39.

APPENDIX No. 4.

41 I. C. C. Statement of earnings on present and proposed rates, Kansas City to Iowa and Minnesota points, compared with earnings on rates from Chicago and St. Louis.

From—	To—	Present rate.	Proposed rate.	Increase.	Per cent of increase.	Distance as computed by pro- testant.	Kansas City ad- vantage in dis- tance.	Revenue per ton-mile.		Charge per mini- mum car.		Per car-mile earnings.	
								Present.	Proposed.	Present.	Proposed.	Present.	Proposed.
Kansas City.....	Boone.....	Cents. 16.5	Cents. 22	Cents. 5.5	33	Miles. 272	Miles. ....	Mills. 12	Mills. 16.1	\$59.40	\$79.20	Cents. 21.8	Cents. 29.1
Chicago.....	do.....	18.5	23	4.5	24	340	68	11	13.5	66.60	82.80	19.6	24.4
St. Louis.....	do.....	18.5	23.5	5	27	382	110	9.7	12.5	66.60	84.60	17.4	22.1
Kansas City.....	Cambridge.....	16.5	22	5.5	33	265	...	13	17.2	59.40	79.20	23.3	31.1
Chicago.....	do.....	17.5	21	3.5	20	332	77	10.5	12.6	63.00	75.60	19	22.8
St. Louis.....	do.....	17.5	21	3.5	20	360	106	9.7	11.7	63.00	76.60	17.5	21
Kansas City.....	Centerville.....	14	22	8	57	163	...	17	27	50.40	79.20	30.9	48.6
Chicago.....	do.....	17.5	23	5.5	31	334	171	10.5	15	63.00	82.80	18.8	24.8
St. Louis.....	do.....	14.5	19.5	5	34	268	105	10.9	14.6	52.20	71.20	19.4	26.6
Kansas City.....	Des Moines.....	13	22	9	70	230	...	11.2	19.1	46.80	79.20	20.3	34.4
Chicago.....	do.....	17.5	21	3.5	20	358	128	9.9	11.7	63.00	75.60	17.3	21.1
St. Louis.....	do.....	14.5	19.5	5	34	340	110	8.5	11.5	52.20	71.20	15.4	20.9
Kansas City.....	Fort Dodge.....	18.5	22	3.5	19	316	...	11.7	14	66.60	79.20	21.1	25.1
Chicago.....	do.....	18.5	23	4.5	24	375	59	9.9	12.3	66.60	82.80	17.8	22.1
St. Louis.....	do.....	18.5	24	5.5	30	426	110	8.5	11.3	66.60	86.40	15.6	20.8
Kansas City.....	Marshalltown.....	14.5	22	7.5	52	288	...	10.1	15.3	52.20	79.20	18.1	27.5
Chicago.....	do.....	14	21	7	50	289	1	9.7	14.5	50.40	75.60	17.4	26.2
St. Louis.....	do.....	14.5	21	6.5	45	352	64	8.2	11.9	52.20	75.60	14.8	21.5
Kansas City.....	Pella.....	14.5	22	7.5	52	278	...	10.5	15.9	52.20	79.20	18.5	28.6
Chicago.....	do.....	17.5	20	2.5	14	348	70	10.1	11.5	66.00	72.00	18.1	20.7
St. Louis.....	do.....	14.5	19.5	5	34	286	8	10.1	14	52.20	71.20	18.2	24.9
Kansas City.....	Webster City.....	18.5	22	3.5	20	299	...	12.3	14.7	66.60	79.20	22.3	26.5
Chicago.....	do.....	18.5	23	3.5	20	354	55	10.5	12.4	66.60	79.20	18.8	22.4
St. Louis.....	do.....	18.5	22.5	4	21	409	110	9	11	66.60	81.00	16.2	19.8
Kansas City.....	St. Paul.....	16.5	28	11.5	70	490	...	6.7	11.4	(?)		(?)	
Chicago.....	do.....	14	20	6	43	398	192	7	9.8				
St. Louis.....	do.....	14.5	21	6.5	41	576	86	5	7.3	(?)		(?)	
Kansas City.....	Duluth.....	19.5	31	11.5	60	643	...	6	9.6				
Chicago.....	do.....	16.5	22	5.5	33	470	173	7	9.4	(?)		(?)	
St. Louis.....	do.....	19	26	7	37	729	86	5.2	7.1				

1 Disadvantage.

2 Not computed.

APPENDIX No. 5.

Table showing, in cents per 100 pounds, present and proposed rates on iron and steel pipe and connections from Chicago to points in Iowa.

To—	Present.	Proposed.	Increase.	
			Cents.	Per cent.
Maquoketa.....	14	15.6	1.6	11.43
New Liberty.....	14	16	2	14.29
Durango.....	14	16.1	2.1	15
Tipton.....	14	17	3	21.43
Cedar Rapids.....	14	18	4	28.57
Independence.....	14	19	5	35.71
Waterloo.....	14	20	6	42.86
Parkersburg.....	14	21	7	50
Albia.....	16.5	20	3.5	21.21
Des Moines.....	16.5	21	4.5	27.27
Centerville.....	16.5	23	6.5	39.39
Jewell Junction.....	17.5	22	4.5	25.71
Fort Dodge.....	17.5	23	5.5	31.43
Osceola.....	18.5	22	3.5	18.92
Sioux City.....	18.5	23	4.5	24.32
Hawarden.....	19	24	5	26.32

# APPENDIX No. 6.

Table showing, in cents per 100 pounds, present commodity rates from Mississippi River crossings on iron pipe and connections, on traffic originating east of the Indiana-Illinois state line, to points in Iowa, compared with proposed rates.

To—	Present.	Proposed.	Increase.	
			Cents.	Per cent.
<b>9-cent group:</b>				
West Union.....	9	9.1	0.1	1.11
New Hampton.....	9	10	1	11.11
Charles City.....	9	12	3	33.33
Mason City.....	9	13.7	4.7	52.22
Waterloo.....	9	9.3	.3	3.33
Waverly.....	9	9.7	.7	7.78
Hampton.....	9	12	3	33.33
Vinton.....	9	9		
Toledo.....	9	11.4	2.4	26.67
Marshalltown.....	9	12.9	3.9	43.33
Grinnell.....	9	9.7	.7	7.78
Monticuma.....	9	9.1	.1	1.11
Oakloosa.....	9	9.3	.3	3.33
<b>11-cent group:</b>				
Iowa Falls.....	11.5	12	.5	4.35
Nevada.....	11.5	14	2.5	21.74
Des Moines.....	11.5	12.6	1.1	9.57
Newton.....	11.5	10.8	1.7	16.09
Indianola.....	11.5	12.9	1.4	12.17
State Center.....	11.5	13.2	1.7	14.78
<b>12-cent group:</b>				
Lake Mills.....	12.5	18	5.5	44
Clear Lake.....	12.5	14.3	1.8	14.40
Garner.....	12.5	14.3	1.8	14.40
Belmond.....	12.5	14.3	1.8	14.40
Clarion.....	12.5	13.7	1.2	9.60
Eagle Grove.....	12.5	14.3	1.8	14.40
Fort Dodge.....	12.5	14.9	2.4	19.20
Webster City.....	12.5	13.7	1.2	9.60
Jewell.....	12.5	15.8	3.3	26.40
Gowrie.....	12.5	16.9	4.4	35.20
Beema.....	12.5	15.8	3.3	26.40
<b>13-cent group:</b>				
Algona.....	13.5	16.9	3.4	25.19
Spencer.....	13.5	18	4.5	33.33
Sheldon.....	13.5	18	4.5	33.33
Pecahontas.....	13.5	18	4.5	33.33
Charokas.....	13.5	18	4.5	33.33
Le Mars.....	13.5	18	4.5	33.33
Rockwell City.....	13.5	16.4	2.9	21.48
Sioux City.....	13.5	18	4.5	33.33
Jefferson.....	13.5	16.9	3.4	25.19
Carroll.....	13.5	18	4.5	33.33
Denison.....	13.5	18	4.5	33.33
Atlantic.....	13.5	17.5	4	29.63
Council Bluffs.....	13.5	18	4.5	33.33
Afton.....	13.5	13.7	.2	1.48
Creston.....	13.5	14.3	.8	5.93
Villisca.....	13.5	16.4	2.9	21.48
Red Oak.....	13.5	17.5	4	29.63

<sup>1</sup> Decrease.

No. 9489.  
**GALION IRON WORKS & MANUFACTURING COMPANY  
ET AL.**  
*v.*  
**BALTIMORE & OHIO RAILROAD COMPANY ET AL.**

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*Submitted June 10, 1917. Decided November 9, 1917.*

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1. Rate of \$1.95 per ton on coke from the Connellsville, Pa., and Fairmont, W. Va., regions to Bucyrus, Crestline, Galion, and Marion, all in the state of Ohio, not found to be unreasonable or unduly preferential or prejudicial.
2. Mere distance comparisons of the nearer points in the complaining group with specific points in lower rated groups, without reference to the group adjustment as a whole, held not to warrant the making of another group to include the complaining points.
3. Carriers' attention called to a fourth section departure occurring in connection with a route which is not used by the carriers but which is available under their joint tariff. Complaint dismissed.

*Leo Feit and Ira E. Arnold* for complainants.

*William W. Collin, jr.*, for defendants.

**REPORT OF THE COMMISSION.**

The rate of \$1.95 per ton on coke from the Connellsville, Pa., and Fairmont, W. Va., regions to Bucyrus, Crestline, Galion, and Marion, all in the state of Ohio, is here alleged to be unreasonable and unduly prejudicial, and reparation is asked on past shipments. This rate applies to one of the groups into which the state of Ohio is divided in respect of this traffic. The points of origin in both the Connellsville and the Fairmont regions are also grouped. The group rates begin at \$1.20 in eastern Ohio and increase to \$2.30 in the western part of the state. The eastern part of the \$1.95 group wedges in between the \$1.85 group on the north and the \$1.65 group on the south, and the group extends west as far as Lima and Dayton. It is the contention of the complainants, who are engaged in the manufacture of foundry iron and machinery, that this group is too large in comparison with the other groups, and that it subjects the complaining points in the eastern part, and between the \$1.85 and \$1.65 groups, to undue prejudice and disadvantage, and gives to points in those groups an undue preference and advantage. It is their suggestion that there be formed another group, to include points in the present group on and east of the line of the Hocking Valley Railway north from Colum-



bus to Marion and the line of the Pennsylvania system thence northeast to Carrothers. The accompanying map, which is a reproduction of a map filed in the record by the complainants, will show the location of the respective groups. All the points of destination mentioned herein are in the state of Ohio when not otherwise stated.

Formerly the \$1.85 group was a part of the \$1.95 group. It was formed as a result of our reduction, in *Coke Producers Asso. of Connelleville v. B. & O. R. R. Co.*, 27 I. C. C., 125, of the rate to Toledo. The other points in the new group were directly intermediate to Toledo over practical and used routes. Points not directly intermediate were not included. It is the contention of the complainants that the defendants are not justified in omitting the points here involved from this group, since they are geographically adjacent to the directly intermediate points and compare favorably in distance with those points.

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The following table, compiled from exhibits filed by the complainants, shows the rates, average distances, and ton-mile earnings from the Connellsville district to the complaining points and to certain other points involved in the case cited. The rates shown to Toledo, Cleveland, and Canton represent reductions made in that case of 10, 5, and 5 cents, respectively; the rates to the other points were not reduced. In some instances more than one route is shown.

	Group rate.	Miles.	Ton-mile (mills).		Group rate.	Miles.	Ton-mile (mills).
Bucyrus.....	195	270.1	7.21	Cleveland.....	160	201	7.96
Crestline.....	195	257.6	7.57			217	7.37
		276.7	7.04	Youngstown.....	120	134	8.96
Galion.....	195	271	7.20			134	8.96
		261.1	7.46	Canton.....	140	170	8.20
Marion.....	195	292	6.67	Buffalo, N. Y.....	185	339	5.46
		268	6.77			326	5.67
		282.7	6.89	Detroit, Mich.....	210	394	5.33
Toledo.....	185	329	5.62			379	5.54
		314	5.89	Columbus.....	165	260	6.25
						263	6.16

Another exhibit filed by the complainants purports to show that to Bellevue, Fostoria, Fremont, Norwalk, Sandusky, Tiffin, and Toledo in the \$1.85 group, and to Mansfield and Columbus in the \$1.65 group, the ton-mile earnings range from 5.18 to 7.37 mills for average distances over various routes of from 244.1 to 357.1 miles.

The defendants present exhibits purporting to show average distances and ton-mile earnings as follows:

Route.	Average miles.	Ton-mile (mills).
\$1.65 group:		
B. & O.....	266	6.46
Pa.....	267	6.96
P. & L. E.....	267	6.42
\$1.85 group:		
B. & O.....	306	6.06
Pa.....	291	6.36
P. & L. E.....	301	6.166
\$1.95 group:		
B. & O.....	345	5.66
Pa.....	313	6.26
P. & L. E.....	346	5.666

In computing the average distances from the Baltimore & Ohio points, the nearest and farthest points in the destination groups were selected. In connection with the Pennsylvania and Pittsburgh & Lake Erie routes all common and junction points were taken. According to computations of the complainants in their brief, made on the same bases as the defendants' exhibits, the average distance, over all routes, to the new group which the complainants suggest should be created, is 7 miles less than the average distance to the \$1.85 group.

The complainants refer to competition which they meet with foundries located in the lower rated groups, including Columbus and Mansfield in the \$1.65 group. The record indicates that they meet similar competition at foundry points of greater distance in their own group, including such points as Springfield, Lima, and Dayton. The defendants contend that from an industrial competitive standpoint there is no more reason for reducing the complainants' rates than there is for reducing the rates to these other points of greater distance, and that from a transportation standpoint, considering relative distances, there is shown upon this record no more reason for reducing the complainants' rates than for increasing the rates to these farther distant points in the same group.

The complainants' case seems to be based largely upon the reduction of the Toledo rate in the *Connellsville Case*, and of the intermediate point rates as a result thereof. Toledo was one of 22 furnace points in the states of New York, New Jersey, Pennsylvania, Maryland, Ohio, Indiana, Michigan, Illinois, and Wisconsin involved in that case, to 9 of which the rates were reduced. The volume of the coke movement for furnace use in that case was very much greater than of the foundry coke here involved, and was much more of a factor in production, 1.17 tons of coke being required in the production of a ton of pig iron, while the proportion is 1 ton of coke to about 6½ tons of pig iron in the production of foundry iron. The largest shipper of any of the complainants who testified received about 200 tons, or 8 carloads, of coke each month. The car loading was also heavier in the *Connellsville Case*, averaging about 37 tons to the car.

In the *Connellsville Case* we had before us comprehensive analyses of operating and transportation conditions and detailed comparisons of the rates attacked with other rates on coke and on other commodities of similar transportation characteristics, and an adequate record generally. In the present case the complainants rely wholly, from a transportation standpoint, upon mileage and ton-mile comparisons of these nearer points in the \$1.95 group with certain of the specific points in the lower rated groups without regard to the average mileages and ton-mile earnings to the respective groups and without other evidence purporting to establish that the grouping is improper.

HARLAN, *Commissioner*:

Having stated the facts of the case in the foregoing language, the attorney-examiner by whom the evidence was heard proposed a dismissal of the complaint upon the general ground that group adjustments are not unlawful so long as the discriminations between the groups and between the several points in the same group are not undue and that upon the whole record the rates complained of had

not been shown to be unreasonable or unduly discriminatory or prejudicial, it being his view that an undue degree of inequality may be shown only by substantial evidence dealing with the situation as a whole, and that mere comparisons of distance, without other material and supporting facts adduced of record, do not justify a further division of the grouping in question in the manner demanded by the complainants.

No exceptions were filed by the parties in interest to the examiner's report of the facts; and, under our rules of practice, the case stands submitted.

Our own examination of the record fully confirms the facts as stated in the tentative report of the examiner and warrants and requires the rulings therein proposed. We therefore find and conclude that the complaint has not been sustained and must be dismissed.

There is one further question that arises in the case under the fourth section of the act. Traffic originating on the Pittsburgh & Lake Erie is routed to Fostoria through Youngstown, Creston, and Toledo, over the Hocking Valley as the delivering line south from Toledo. It could be routed through Youngstown and Marion, over the Hocking Valley as the delivering line north from Marion. No basis for divisions between the carriers has been established over the latter route, but all the carriers in the route are parties to the tariff, which contains no restrictions as to routing. The defendants state that this is a technical violation, since this routing has never been contemplated by the tariff, which is a joint agency issue. Nevertheless, the situation is not covered by any application for fourth section relief and is a departure from that provision which the defendants will be expected to correct.

Our order will be entered in accordance with the foregoing findings and conclusions.

**INVESTIGATION AND SUSPENSION DOCKET No. 1025.**  
**NEW YORK HARBOR STORAGE.**

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**INVESTIGATION AND SUSPENSION DOCKET No. 1026.**  
**HOLD FREIGHT FREE TIME.**

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*Submitted October 4, 1917. Decided November 6, 1917.*

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Proposed reduction from five days to two days in the free time allowed for holding at respondents' terminals at the port of New York domestic freight consigned to "New York lighterage," justified. Proposed increased storage charges, applicable on both export and domestic shipments, shown to be reasonable.

*Frederic L. Ballard, R. W. Barrett, W. J. Larrabee, Charles E. Miller, and John M. Sternhagen* for respondents.

*Cullom & Rinke and Charles J. Austin* for New York Produce Exchange; *Samuel D. Snow* for International Harvester Corporation; *A. W. McLaren, John S. Burchmore, and Luther M. Walter* for Morris & Company; *H. G. Wilson* for Millers National Federation; and *J. C. Lincoln* for Merchants' Association of New York, protestants.

**REPORT OF THE COMMISSION.**

The following is the report proposed by the examiner:

Two questions are submitted for determination in these proceedings: (1) The propriety of a proposed reduction from five days to two days in the free time allowed by the carriers serving the port of New York for "holding" at their terminals at that port,<sup>1</sup> domestic freight consigned to "New York lighterage"; and (2) the reasonableness of proposed increased storage charges applicable on both export and domestic freight held at the port of New York after the expiration of free time. These issues are closely related to those presented in Investigation and Suspension Docket No. 1010, *Export Freight Free Time*, now pending, in which the carriers propose to reduce from 15 days to 5 days the free time on export freight at New York and certain other ports. The report in that proceeding will discuss a number of the points raised in the instant cases. All of

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<sup>1</sup>The terminals of the Pennsylvania Railroad, the Central Railroad of New Jersey, the Delaware, Lackawanna & Western Railroad, the Erie Railroad, the West Shore Railroad, and the Lehigh Valley Railroad are located on the New Jersey shore. The terminal of the New York Central is at Sixtieth street, on Manhattan Island, and that of the Baltimore & Ohio at St. George, Staten Island. Nearly all the evidence has been addressed to the terminals located on the New Jersey shore, and the others will not be further mentioned in this report.

the evidence therein has been made a part of the record in the present cases by stipulation. In view of the fact that all of the parties to the instant cases also participated in No. 1010, reference will be made herein to the report in that case. It is proposed in No. 1010 to reduce the free time on export freight at various Atlantic and Gulf ports, but in these proceedings to reduce the free time on domestic shipments and to increase the storage charges on both export and domestic shipments at the port of New York alone. The schedules in the instant cases were suspended until June 15, 1917, and later until December 15, 1917.

#### FREE TIME ON DOMESTIC SHIPMENTS.

The method of handling freight at the port of New York by car floats and lighters is so generally understood, and has been so frequently discussed in former cases, that it is deemed unnecessary to describe it here. A complete description will be found in *Lighterage and Storage Regulations at New York*, 35 I. C. C., 47. It will suffice for the purposes of these cases to observe that the carriers serving the port of New York permit shippers to bill freight intended for delivery in New York or Brooklyn to "New York lighterage," without more specific designation of the place of delivery, the understanding being that cars thus billed will be hauled by the carriers to their holding yards at or near the port, to be forwarded later to some point in the harbor upon the receipt of definite instructions from the shipper or consignee. If those instructions are received before the car reaches the holding point, no charge in addition to the transportation rate is made for forwarding it to any point within the lighterage limits. If the instructions are not received before the car reaches the holding point, an additional charge of \$2 is imposed. The propriety of this charge was in issue in *New York Produce Exchange v. B. & O. R. R. Co.*, 46 I. C. C., 666. Domestic freight may be held at the holding point for five days without incurring storage charges, but thereafter storage is assessed. It is proposed to reduce the free time to two days.

The history of free time on domestic freight at New York since 1898 is briefly as follows:

	Days.
1898 to January 1, 1907-----	20
January 1, 1907, to September 15, 1915 <sup>1</sup> -----	10
September 15, 1915, to date-----	5
Now proposed-----	2

The reduction from 10 days to 5 days was approved by the Commission in *Lighterage and Storage Regulations at New York*, *supra*.

<sup>1</sup> From April, 1907, to May, 1908, the Pennsylvania Railroad allowed only 4 days, but for competitive reasons it restored the 10-day period.

The only protestant against the proposed reduction in free time is the New York Produce Exchange, some of whose members are flour brokers. The testimony of this protestant relates exclusively to flour, its contention being that because of the unusual conditions surrounding the handling of this traffic at the port of New York the flour dealers must have at least five days' free time for holding their shipments on the New Jersey shore. So much of the evidence has been addressed to this point that it is necessary to explain in some detail the method of handling flour at the port.

The flour dealers on whose behalf this protest is made are wholesale commission merchants who buy flour at various points and sell it principally to bakers and retail dealers. It has been said that the flour is "sold" before the wholesale dealer orders it from the miller, but the sale is not consummated until after the arrival of the flour at the port. A wholesale dealer may have on his books a number of orders which he has agreed to fill and he purchases the necessary flour from the miller. The shipments are not consigned to the retail dealer, however, but to "New York lighterage," and the wholesale dealer does not "allot" a particular carload of flour to a particular customer until after its arrival at the port. This practice is necessary because all flour except the well-known standard brands must be inspected before delivery in order that the wholesale dealer may be sure that the flour allotted to a particular customer is of the exact grade and quality ordered by him. The susceptibility of flour to contamination and the rigid rules of the health department of the city of New York also make the inspection necessary. It is said that more than 50 per cent of all the flour received must be inspected. After inspection it is transported in lighters from the New Jersey piers to the desired points of delivery in the harbor. The price of flour usually includes delivery in New York, the freight charges being included in the price. Storage charges and other terminal costs must be borne by the wholesale dealers or by their customers.

The carriers whose terminals are located on the New Jersey shore have large covered piers at Jersey City and Hoboken which are used in part for the direct transfer of freight from cars to lighters and in part for the storage of freight awaiting delivery to lighters. Several of these piers are used principally for handling flour and are equipped specially for that purpose. Practically every carload of flour arriving at the port is unloaded by the carriers and placed on the covered piers. It is to the interest of the carriers and the merchants to have the flour unloaded as promptly as possible after its arrival at the port, and the carriers' agents are instructed to unload every car onto the piers as soon as it arrives, or as soon as it can be accommodated on the pier, in order that the cars may be promptly released and the flour inspected. As previously stated, all



flour except the standard brands must be inspected before delivery, and for that purpose the New York Produce Exchange maintains an inspection department with 10 expert inspectors, 4 of whom, with 9 assistants, are stationed on the carriers' piers in Jersey City and Hoboken to weigh and inspect the flour after it is unloaded from the cars. The chief inspector has his office in the building of the Produce Exchange in New York.

As soon as a carload of flour is unloaded from car to pier an arrival notice is sent to the consignee, and the free time begins to run at 7 a. m. on the following day.<sup>1</sup> When a dealer receives such a notice he immediately notifies the chief inspector to weigh and inspect the shipment. The chief inspector then transmits the order by telephone to his men on the New Jersey piers, and as soon as their other work is finished they make the inspection, which usually takes about one hour. A long auger is run through each barrel or other container and a sample of the flour is extracted. Messengers then take the samples, bearing the car numbers and other marks of identification, to the chief inspector's office, where the samples are inspected, and a certificate is prepared showing the grade of the flour. The sample and the certificate are then sent by messenger to the wholesale dealer who ordered the inspection. If the wholesale dealer is one of those who sell on the floor of the exchange, they will be sent to his "table" there. The exchange closes at 3 p. m., and unless the inspection is completed before that time the certificate and sample will be held by the chief inspector until the next morning; but if the dealer is one who does not sell on the exchange, the certificate and sample can be dispatched immediately to his office. The dealer may then sell the flour, or "allot" it to a customer who has already ordered it.

It would seem from the above description that this whole process of inspection could be completed in one day, or in two days at the most, but the flour dealers insist that three days are necessary. According to their testimony, the three days are consumed thus: If the arrival notice is received on a given morning, the order for inspection is forwarded to the chief inspector and transmitted by him to the inspectors on the New Jersey piers. It is said that they can not

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<sup>1</sup> It seems that the Pennsylvania, and perhaps one or two of the other carriers, send the arrival notice as soon as the car reaches the New Jersey terminal, and in such instances the free time begins to run while the flour is still in the cars. If the shipment is not unloaded onto the piers before the expiration of free time, storage charges are assessed. It is the contention of the New York Produce Exchange that storage charges should not be assessed while the flour is still in the cars and not accessible to consignees, and that issue was directly presented in Docket 9527, *New York Produce Exchange v. B. & O. R. R. Co.*, which was set for hearing in connection with these cases. It was stated at the hearing that the matter could probably be adjusted between the parties, and we were accordingly requested to enter an order dismissing the complaint. Such an order was entered on June 20, 1917. The practice of most of the lines is to notify the consignee when the flour is placed on the pier, as stated in the text, and storage charges are therefore not assessed while the shipments remain in the cars.

make the inspection on the first day because they probably have not completed the inspections ordered on the preceding day. We must assume, according to the testimony of these witnesses, that one whole day has now elapsed. The second day, it is said, will be consumed in making the inspection, transmitting the samples to the chief inspector for his further examination, and completing that examination. On the third day the samples and certificates are delivered to the dealers and the sales or "allotments" are made. It is said that when flour is sold to the city of New York and to certain foreign countries the inspection rules are more rigid and more time is required to make the necessary certification.

The period of three days, said by the flour dealers to be necessary for weighing, inspecting, and allotting the flour, could probably be somewhat reduced if necessary. In connection with the above description of the method employed in handling the flour, one is prompted to inquire why all of the first day should be consumed in ordering the inspection made and transmitting the order to the inspectors on the New Jersey piers. The protestant's contention that from a practical point of view the inspection could not be made on the first day because the inspectors must use that day in completing the orders of the preceding day can hardly be accepted, especially since it affirmatively appears that the only orders not transmitted to the inspectors on the same day that they are received are those arriving late in the afternoon. The chief inspector's office is connected by telephone with the New Jersey piers, and an order for inspection received by the chief inspector can be transmitted forthwith to his men on the piers. It is admitted that the actual process of inspecting a carload of flour on the pier does not take much more than one hour, and if the samples were promptly taken to the chief inspector's office it would seem that his inspection of the samples, which requires only a short time, could be completed on the first day. A whole day would thus be saved.

In its brief the protestant disclaims any intention of contending "that the official inspection and examination operations in each case take fully three days," but it observes that, as a matter of fact, it is usually "three days from the time the order for inspection is given \* \* \* until the flour dealer receives his returns." Under the present practice this is true, but it leaves unanswered the important question whether the time could not be materially shortened if the circumstances so required.

Although the protestant admits that a period of three days usually suffices for the inspection, it contends that the free time must not be less than five days, because of a number of difficulties experienced by the flour dealers in conducting their business, some of which, it is

said, are due rather to the negligence of the respondents than to any want of diligence on the part of the flour dealers. The first of the difficulties is due to the varying time of shipments in transit. A carload of flour shipped from Minneapolis to New York may arrive in 10 days, or it may not arrive for 90 days. The inconvenience and loss to shippers occasioned by this irregularity will be discussed in the report in No. 1010, and will not be elaborated here, but it may not be amiss to note, in passing, that the irregularity of time in transit is one of the principal causes of congestion at the port. It would seem to be important that the carriers, for their own benefit as well as in the public interest, make every possible effort to maintain more even running schedules.

If a consignment of export flour misses the vessel on which space has been reserved the shipper must often pay not only for storage at the port, but for space on another vessel. If, on the other hand, a domestic shipment is delayed in transit, the wholesale dealer may be able to avoid all or part of this added cost by finding another customer for the flour. Emphasis is laid on the fact that the time required by the carriers for lightering flour across New York harbor also varies. On certain shipments in April, 1917, the time actually employed in effecting delivery by lighter at respondents' own pier stations in the harbor varied from 2 days to 13 days. The protestant reminds us also that the tariffs providing for free time at New York make no allowance for weather interference or bunching, but the respondents reply that under the proposed tariffs the New York dealers will be allowed the usual period of 48 hours' free time on the New York side and two days on the New Jersey side, whereas at all other ports no free time is allowed on domestic freight in addition to the 48 hours usually accorded, and they contend that the extra period of two days allowed in the proposed tariffs more than offsets the disadvantage resulting from the absence of a provision for bunching. A statement introduced in evidence by the carriers shows that of 28,296 cars detained at nine typical cities in trunk line territory during a representative period in 1916, allowances for weather interference and bunching were made on only 15 cars, and that the average free time allowed was 2.00159 days. On the evidence now before us it can not be said that the respondents' failure to make an allowance for the bunching of cars at New York operates to the undue prejudice of the protestant or its members.

The five days' free time now accorded on the Jersey shore is in addition to the usual period of 48 hours' free time allowed after delivery on the New York side. We have already observed that even under the proposed rules the New York dealers will have four days'

free time in the aggregate, two days on each side of the harbor. Respondents point out that at no other port is any free time allowed short of the point of ultimate delivery. At Philadelphia flour is unloaded into warehouses upon arrival, and only two days' free time is accorded. A reduction from four days to two days in the free time at Philadelphia was approved by the Commission in *Commercial Exchange of Philadelphia v. P. R. R. Co.*, 38 I. C. C., 320. The free time at Baltimore has also been reduced from 10 days to 2 days. *Flour Storage*, 46 I. C. C., 295.

The protestant contends that conditions at the port of New York are unusual, the peculiar feature of the situation at that port being the necessity of transferring freight in lighters or car floats between the New Jersey side of the harbor and the New York side. Respondents suggest that if flour were handled in the same manner as fresh meat and packing-house products the carriers would be relieved of a burden they are now bearing. One of the large shippers of these commodities has cold-storage plants located at various points on Manhattan Island and shipments are billed directly to those plants, without any detention by the shipper on the Jersey shore. The flour dealers contend that it would be impracticable to handle flour in that way because the flour warehouses would have to be located on the Manhattan water front to insure the economical distribution of the commodity, and it is said that there are no available sites for that purpose. If the warehouses were not located on the water front it is thought that the cost of trucking would be prohibitive. It is intimated that at one time the warehouses were located on the New York side, where the inspection was made, and that the method of handling flour was changed only because the carriers, for their own convenience, acquired facilities for conveniently handling flour on the New Jersey shore and thus, by providing free storage, drove out commercial warehouses which had theretofore catered to the flour trade. It is asserted that commercial warehouses of this character are not now, and for some time have not been, available to the flour trade.

#### REASONABLENESS OF THE PROPOSED STORAGE CHARGES.

The increased storage charges proposed in No. 1025 are intended to apply on both export and domestic freight. In other words, it is proposed to apply the increased charges on domestic shipments after the expiration of two days' free time, and on export shipments after five days' free time, or after such other periods of free time as the Commission may find reasonable in No. 1010 and No. 1026. There have been so many modifications recently in the storage charges at  
47 I. C. C.

the port of New York that the various changes can best be portrayed in tabular form:

*Storage charges in cents per 100 pounds at termini of rail carriers at New York, N. Y., for periods shown.*

	Effective prior to Sept. 15, 1915.	Effective Sept. 15, 1915.	Effective Feb. 19, 1916.	Effective Aug. 15, 1916. <sup>1</sup>	Effective Feb. 15, 1917 (sus- pended).
5 days.....	1	1	1½	1½	1
10 days.....	1	1	1	1	2
15 days.....	1½	2	1½	1½	3
20 days.....	1½	2	2	2	4
25 days.....	2	3	2½	2½	6
30 days.....	2	3	3	3	8
35 days.....	2½	4	3½	4	10
40 days.....	2½	4	4	5	12
45 days.....	3	5	4½	6	16
50 days.....	3	5	5	7	20
55 days.....	3½	6	5½	8	24
60 days.....	3½	6	6	9	28
65 days.....	4	7	6½	11	32
70 days.....	4	7	7	13	36

<sup>1</sup> Approved in *New York Storage*, 40 I. C. C., 265.

The proposed charges are opposed by the New York Produce Exchange, International Harvester Corporation, Morris & Company, Merchants' Association of New York, and Millers National Federation.

The primary object of the proposed charges is to prevent the storage of warehouse freight for extended periods after the expiration of free time, and thus relieve the carriers' facilities for transportation purposes. The carriers frankly concede that these charges are penal in nature, and their principal justification of them is that conditions at the port make a penalty necessary. The secondary object is to reimburse the carriers for the storage service.

A statement has been prepared by the respondents showing the number of cars of flour and other domestic warehouse freight held in warehouses or on tracks on the Jersey shore on a representative day in October for the years 1914, 1915, and 1916. The statement purports to be a "photograph" of the situation as it existed on the day designated, and shows not only how many carload shipments were held on that day, but how long they had been detained:

47 I. C. C.

Statement showing number of domestic carload shipments of flour and other warehouse freight on hand in warehouses and in cars at rail termini, with period of time for which they had been on hand on the dates shown.

Road.		Terminal.		Date.																					
Pennsylvania Railroad.....		.....		Oct. 2, 1914, 1915, and 1916.																					
Central Railroad of New Jersey.....		.....		Oct. 1, 1914, 1915, and 1916.																					
Erie Railroad.....		.....		Oct. 5, 1914, 1915, and Oct. 2, 1916.																					
Delaware Valley Railroad Co.....		.....		Oct. 6, 1914, 1915, and 1916.																					
Delaware, Lackawanna & Western R. R.....		.....		Oct. 1, 1914, 1915, and 1916.																					
No. of days.	Domestic flour. <sup>1</sup>										Other domestic warehouse freight. <sup>2</sup>						Total domestic warehouse freight.								
	1914					1915					1916					1916					1916				
	In cars.	Per cent.	On piers.	Per cent.	In cars.	Per cent.	On piers.	Per cent.	In cars.	Per cent.	On piers.	Per cent.	In cars.	Per cent.	On piers.	Per cent.	In cars.	Per cent.	On piers.	Per cent.	In cars.	Per cent.	On piers.	Per cent.	
	24	40.6	12	5.7	27	26.7	15	17.7	21	23.8	34	14.7	223	23.3	222	22.6	233	17.5	264	24.5	264	24.5	275	17.7	
	19	32.2	35	16.5	25	24.8	12	14.1	15	20.6	25	10.9	133	17.1	133	26.7	246	19.4	192	17.6	240	24.1	235	16.1	
	9	13.6	20	17.9	11	10.9	6	4.9	15	20.6	25	10.9	133	17.1	133	26.7	246	19.4	192	17.6	240	24.1	235	16.1	
	6	8.5	20	9.4	7	6.9	4	4.7	8	6.8	18	7.8	63	12.1	102	10.4	201	15.9	143	13.3	114	9.8	154	9.8	
	11	11.1	19	10.9	11	10.9	4	4.7	4	5.4	27	11.7	38	7.7	63	6.4	97	7.7	88	8.2	78	6.7	128	8.1	
	18	11.1	19	10.9	11	10.9	4	4.7	4	5.4	27	11.7	38	7.7	63	6.4	97	7.7	88	8.2	78	6.7	128	8.1	
	26	1.7	64	3.8	8	8.9	4	4.7	13	17.8	14	6.1	35	4.4	42	4.3	44	3.9	57	5.3	55	4.7	63	4.2	
31	3.4	25	10.8	21	24.7	21	24.7	24	24.2	24	14.9	120	10.8	106	10.8	100	7.9	174	16.3	121	11.3	169	10.8		
Over 120.....	2	3	2	1.4	11	10.9	5	7.0	5	5.4	5	2.2	86	10.7	99	9.9	218	17.3	111	10.3	119	10.8	242	16.3	
Totals.....	59	100	312	100	101	100	85	100	73	100	231	100	805	100	964	100	1,264	100	1,076	100	1,170	100	1,568	100	

<sup>1</sup> This statement does not include 19 cars held by the Erie Railroad, containing flour, as it was impossible to ascertain whether held in cars or on piers.

<sup>2</sup> This statement does not include the following cars held on track by Pennsylvania Railroad at holding yards east of Rahway, N. J., not yet moved to Manhattan piers proper on the date in question: 1914, 1; 1915, 42; 1916, 22.



Attention is called to the increase in the total number of cars held, the increase from 1914 to 1916 being approximately 46 per cent; and also to the fact that the percentage of cars held for more than five days has shown an upward tendency. Thus the figures under the heading "total domestic warehouse freight" show that of the total cars held on a representative day in 1914 there had been detained for more than five days 812 cars, or 75.5 per cent of the total. The corresponding figures for 1915 and 1916 are 77.4 per cent and 82.3 per cent. The importance of these figures lies in the fact that they show an increasing tendency to detain cars for longer periods; and this in spite of a reduction from 10 days to 5 days in the free time in September, 1915, a substantial increase in the storage charges in August, 1916, and the imposition of the "holding" charge of \$2 in June and July, 1916. It will be observed that in all three years a substantial number of carload shipments of flour were detained for more than 10 days.

A few calculations from the 1914 figures in the table will show that of the cars held on piers on the days chosen 165 cars, or approximately 60 per cent of the total number detained, had been held at the terminal for more than 10 days. In 1915 the number was 58, or 31 per cent of the total; and in 1916, 172, or 56 per cent of the total. Similar evidence with respect to the export traffic shows that for 1916, 504 cars of the flour on piers, or 65 per cent of the total, were held at the terminals for more than 10 days; and that 197 cars, or 25 per cent of the total, were held for more than 30 days. When it is considered that after being unloaded on piers the flour is ready for delivery, so far as the carrier is concerned, and when it is remembered that the flour dealers concede that three days are adequate for weighing and inspection, the preceding figures furnish striking proof of the fact that flour has been held long periods for purely commercial purposes. In discussing the periods of detention we have referred principally to shipments held on piers. The above percentages would be materially greater if consideration were given also to the figures showing the detention in cars, as set forth in the table.

The protestant contends that flour is not available to consignees until unloaded on the piers, and points out that the figures in the exhibit showing the number of shipments held "on piers" for the various periods are in a sense misleading, because they reflect only the situation as it was found to exist on the days indicated, and do not show, as a matter of fact, how long the shipments were detained on the piers. In other words, although it might be true that on the selected days in 1916 it was found that 56 cars of flour then on the piers had been detained at the terminal from 31 to 60 days, we do not know that they had been unloaded that long, and the protestant contends that detention in cars should not be



counted against the flour merchants. It is true that the exhibit would be more helpful if it showed the exact period of detention on the piers in each instance, but it must be remembered that shipments of warehouse lighterage freight are detained in cars only because they can not be accommodated on the piers; and in gauging the reasonableness and propriety of remedial measures proposed primarily for the amelioration of the general congestion at the port it would seem fair to consider the detention on tracks as well as the detention on piers.<sup>1</sup>

Freight known as "warehouse freight" is not usually held in cars if there is room on the piers for it. Instructions are given by the carriers to their employees to unload such freight into the warehouses as soon as it can be accommodated there. The piers, however, have not been of sufficient capacity to accommodate all of the freight detained, and the carriers have used their tracks at the terminals for storage purposes. On October 2, 1914, the Pennsylvania Railroad, a situation said to be typical, had in its warehouses at Jersey City 662 cars of export freight and 219 cars of domestic freight, a total of 881 cars. On the same date 516 cars were being held on the tracks waiting for space in the warehouses. The Pennsylvania's warehouse capacity has been increased recently and is now somewhat more than 1,000 cars. On May 29, 1917, two days before the hearing, this carrier had 992 cars of freight in its warehouses and 655 cars on tracks, a total of 1,647 cars; and this general condition has prevailed for more than a year. These figures show the importance of inducing shippers, or compelling them, to remove their freight from the warehouses. To remove a carload of freight from a warehouse is to release a car.

The respondents show that the proposed charges on a carload of flour weighing 50,000 pounds are materially lower than the charges accruing for like periods under the uniform demurrage tariffs which recently became effective. The following table makes this clear:

	Demurrage charges. <sup>2</sup>			Storage charges.	
	Effective Nov. 1, 1914.	Effective Dec. 11, 1916.	Effective May 1, 1917.	Present. <sup>3</sup>	Pro- posed. <sup>3</sup>
8 days.....	\$4.00	\$11.00	\$8.00	\$2.50	\$5.00
10 days.....	8.00	31.00	25.00	5.00	10.00
15 days.....	12.00	56.00	50.00	7.50	15.00
20 days.....	17.00	76.00	70.00	10.00	20.00
25 days.....	21.00	96.00	90.00	12.50	30.00
30 days.....	26.00	121.00	155.00	15.00	40.00

<sup>1</sup> Counsel for defendants stated upon oral argument that it had been determined, by inquiry of the proper parties, that the figures in the exhibit showing the number of days' detention "on piers" are correct, and that they do not include detention in cars. The evidence leaves this point in doubt.

<sup>2</sup> These demurrage charges exclude Sundays; and for uniformity have all been figured on the calendar of June, 1917.

<sup>3</sup> Per car of 50,000 pounds.

For short periods the proposed charges compare favorably with those of the public warehouses in New York, where storage charges on flour at the present time are 4 cents per barrel per month or fraction thereof. Under the tariffs proposed in this proceeding a barrel of flour can be held on the Jersey piers for 2 days without charge. For the next 5 days, or a total period of 7 days, the proposed charge is 1 cent per 100 pounds, approximately 2 cents per barrel. For the next 5 days, or a total period of 12 days, the proposed charge is 2 cents per 100 pounds, approximately 4 cents per barrel. It is only beyond the 12-day period that the proposed charges exceed those imposed by warehousemen. In *Flour Storage*, 46 I. C. C., 295, the Commission approved an increased charge of 4 cents per 200 pounds per month or fraction thereof on flour in barrels at the warehouses of the Baltimore & Ohio Railroad in Baltimore.

The following table, prepared by the protestant, shows the storage charges in cents per barrel of flour for the periods indicated, (a) under present conditions; (b) under the present free time and the proposed storage charges; and (c) under the proposed free time and the proposed charges. In the last column is shown the profit or loss to the New York dealers if the proposed tariffs are approved, assuming the present average profit to be 10 cents per barrel, and further assuming that the dealers would absorb the storage charges out of their profits:

Number of days.	Charge under present conditions.	Charge under present free time and proposed storage.	Charge under proposed free time and proposed storage.	Profit or loss under proposed tariffs.
	Cts. per bbl.	Cts. per bbl.	Cts. per bbl.	Cts. per bbl.
3.....	0	0	2	+ 8
6.....	1	2	2	+ 8
8.....	1	2	4	+ 6
12.....	2	4	4	+ 6
13.....	2	4	6	+ 4
18.....	3	6	8	+ 2
23.....	4	8	12	- 2
28.....	5	12	16	- 6
33.....	6	16	20	-10
38.....	8	20	24	-14
43.....	10	24	32	-22
48.....	12	32	40	-30

The holding of freight on the New Jersey shore is of great value to the flour dealers. They concede that it is practically a necessity. It can hardly be contended that a charge of 4 cents a barrel is excessive for storing on the New Jersey piers for 12 days a commodity which at the time of the hearing was worth \$15 per barrel, and which had nearly trebled in price in three years.

The proposed increase in storage charges is but one of a number of steps recently taken by the carriers to relieve the congestion of

freight at the port of New York. A special effort has been made to induce shippers to load more heavily, and in this endeavor the respondents have had the cooperation of the flour shippers, who have greatly increased the average loading. The respondents think it particularly desirable to reduce the number of cars billed to "New York lighterage" and to increase the number of cars billed through to destination, the object being to reduce the number of shipments detained on the Jersey shore awaiting delivery instructions. The indications are that the remedial measures already adopted have had the desired effect. Not only is there an increase in the number of cars billed direct but there has been a notable increase in the total number of cars handled at the port. The following figures for the Delaware, Lackawanna & Western are said to be typical:

	Domestic cars.	Export cars.	Total.
October, 1914.....	528	2,354	2,880
October, 1915.....	589	4,336	4,925
October, 1916.....	1,454	4,528	5,982

The International Harvester Corporation, which is interested only in the export situation, opposes both the proposed reduction in the free time on export freight and the proposed increase in the storage charges. Its opposition to the reduction in free time will be discussed in the report in No. 1010, and we shall consider in this report only that part of the evidence introduced by this protestant which relates to the proposed storage charges.

The first question raised by this protestant is one of law, its contention being that the delivery of export freight at the seaboard, whether moving on port bills or on through bills, is not completed until the shipment reaches the vessel; that while goods are held at the New Jersey terminals awaiting delivery to vessels they are still in the course of transportation; that the holding at the port is simply an incident in the through transportation which in no way benefits the shipper; and that although it is admittedly no part of a carrier's duty to store goods for an unreasonable period after the transportation is completed, it is unlawful for a carrier to impose storage charges on shipments held on their property in the course of transportation. The Supreme Court has held, in effect, that a shipment consigned to a port for export must be regarded as moving in foreign commerce as soon as the transportation begins; that the essential nature of a shipment, not its mere accidents, should determine whether it is state or interstate, domestic or foreign; and that inasmuch as transshipment at the seaboard is but incidental to the through movement, an export shipment can not be given a local character merely by the device of separate bills of lading.

These principles of law are well settled, but they do not lead necessarily to the conclusion that storage charges imposed on export shipments at the seaboard are essentially unlawful. It is true that it is ordinarily incumbent upon a common carrier of domestic freight to allow consignees a reasonable time in which to remove their shipments from the carrier's property, and by analogy it would seem that a reasonable time should be accorded on export freight at the seaboard to permit its transfer from cars to vessels. We know of no principle of law, however, which denies to a carrier the right to impose storage charges after the expiration of a reasonable period of free time; on the contrary, that right has been frequently recognized. The propriety of assessing storage charges at the ports on export shipments moving under through billing is one of the issues in Docket 4844, *In the Matter of Bills of Lading*, now pending.

That the proposed rules and charges would considerably increase the expenses of the International Harvester Corporation on its export shipments is shown by one of the exhibits. Basing the figures on a representative period in 1916, it is shown that the storage charges paid by this protestant for one year, under the tariffs now in effect, amounted to \$11,169.35. Under the proposed tariffs the charges on the same shipments would be \$51,970.46. If the free time of 15 days were continued, and the increased storage charges approved, the storage charges on these shipments would amount to \$28,182.69. A still more striking comparison is the following, which shows the increases in storage charges on a carload of agricultural implements weighing 36,164 pounds and detained at the port for 60 days, including free time: In 1908, \$7.23; in 1915, \$10.85; in January, 1916, \$18.08; in August, 1916, \$21.70; now proposed, \$86.79. These increases are considered an unjust burden, especially since the protestant endeavors to expedite the transshipment of its products, and since the total transportation charges have already increased materially. In addition to the recent increases in storage charges and reductions in free time, the export rate on agricultural implements from Chicago to New York has increased from 23 cents per 100 pounds in 1902, minimum weight 20,000 pounds, to 31½ cents, the full class rate, in 1917; and a further increase of 15 per cent in the class rate has recently become effective.

Even the present storage charges at New York are materially higher than those at other prominent ports. At Philadelphia and Baltimore the charges are the same as those that prevailed for some time at New York, 1 cent for the first period of 10 days beyond free time and one-half cent for each succeeding period. If the proposed charges are approved and the free time remains unchanged it will be much more expensive to hold export freight at New York than at the

other ports. This is made clear in the following table, which is based on a carload weight of 36,164 pounds, said to be the average loading of agricultural implements:

At— .	For 25 days.	For 30 days.	For 40 days.	For 60 days.
New York.....	\$7.23	\$10.85	\$21.69	\$57.86
Philadelphia.....	3.62	5.44	7.23	10.85
Baltimore.....	3.62	5.44	7.23	10.85
New Orleans.....	6.33	6.33	13.56	14.46

In response to an inquiry made at the hearing, counsel for respondents stated that there is no present intention of increasing the storage charges at the other ports.

Evidence was also introduced on behalf of Morris & Company, which exports large quantities of fresh meats through New York. This evidence is substantially the same as that presented in No. 1010 on behalf of Swift & Company, and it is believed that the position of this protestant with respect to the export situation is sufficiently covered by that report.

#### CONCLUSION.

The congestion of freight at the port of New York since the fall of 1915 has been serious, and is attributable in no small degree to the fact that the piers on the New Jersey shore which are used for the storage of warehouse freight are also used for the transfer of freight from cars to lighters. Every pound of lighterage freight arriving on the Jersey shore, whether for delivery in Manhattan or Brooklyn, or for export, must be handled over these piers. It can readily be understood, therefore, that a congestion of warehouse freight on the piers leads to a like congestion of cars on tracks, blocks the carriers' terminal facilities, and results in embargoes. Even cars billed directly through to deliveries in New York and Brooklyn are delayed if the space on the piers is occupied by other commodities. The fact that approximately 50 per cent of this country's total import traffic moves through the port of New York gives to this situation an aspect of national, even international, consequence. The prompt export of commodities to European nations is of vital importance. In the light of this situation attempts made in good faith by the carriers to relieve the congestion should be approved.

The liberal provisions as to free time at the port of New York originated at a time when the carriers' facilities were adequate to handle all the tonnage offered. That there has been a marked change in this respect can not be denied. That competition between carriers was one of the reasons for the longer free time at New York was



recognized by the Commission in *Brey v. Pennsylvania R. R. Co.*, 16 I. C. C., 497.

That the respondents are justified in reducing the free time on domestic freight is clearly established by the evidence of record. It is significant that no protest against this reduction has been made except by the flour interests; and an analysis of their position shows that their demand for the continued allowance of free time is based rather on commercial considerations than on transportation conditions. The New York flour dealers may not properly demand a total free time of seven days on their shipments when dealers at other ports have but two days; nor is it an adequate answer to this statement to say that the conditions at the port of New York are unusual. However unusual they may be it would clearly be unjust to the carriers to rule that it is incumbent upon them to hold flour on their valuable piers for five days without charge, solely because the flour dealers find it convenient to use the carriers' facilities for storage purposes. The extent to which the flour merchants would use the terminal facilities for storage if permitted to do so is indicated by their contention that in addition to a reasonable period of free time they should be allowed to store domestic flour on the piers for 30 days and export flour for 60 days, at reasonable rates, as distinguished from penalty charges. There is merit in respondents' contention that "some remedy must be found for a condition that entails the holding *on piers* of 36.8 per cent of total flour shipments on hand (on piers) on typical days in October, 1916, for longer than 30 days." In Docket 8994, *Committee on Ways and Means, etc., v. B. & O. R. R. Co. et al.*, now pending, the allegation is made on behalf of the cities located in the northern part of New Jersey that permitting New York shippers to hold their shipments for seven days in the aggregate, when only two days are allowed on New Jersey traffic, gives an undue preference to New York and results in undue prejudice to the people and the communities of northern New Jersey.

In *Pittsburgh & Ohio Mining Co. v. B. & O. R. R. Co.*, 40 I. C. C., 408, at page 409, we said:

We have expressed the view that carriers are justified in establishing car service rules which will insure the prompt release of equipment; that demurrage charges represent in part compensation to the carrier for the use of its equipment, and in part a penalty imposed upon shippers for the detention of cars; that carriers are not obliged to provide storage in cars, but if they do so they are entitled to reasonable compensation for the service; that a consignee has no legal right to use a car as a warehouse; that the business of a railroad is transportation, not storage; that storage at destination is a service not embraced in the rate, and for which additional compensation may be exacted; that it is to the interest of both carriers and shippers that cars be promptly released; and that an obligation rests upon defendant so to conduct its business

that all of its patrons shall be accorded the fullest and freest use of its equipment. *Peale, Peacock & Kerr v. C. R. R. of N. J.*, 18 I. C. C., 25; *Demurrage Charges on Interstate Traffic*, 25 I. C. C., 314; *Wilson Produce Co. v. P. R. R. Co.*, 16 I. C. C., 116, 121; *In re Demurrage Investigation*, 19 I. C. C., 496, 498; *N. Y. Hay Exchange Asso. v. P. R. R. Co.*, 14 I. C. C., 178, 184.

In our report in *Lighterage and Storage Regulations at New York*, *supra*, at page 55, we observed that "freight is stopped and held (on the Jersey shore) primarily for the benefit of the shipper and not for the benefit and convenience of the carrier," and referring to the then prevailing practice of according 10 days' free time on domestic freight we expressed the opinion that "the railway companies are under no obligation to continue the practice." The evidence now before us shows that what was said in that report with respect to the 10-day period applies also to the 5-day period now accorded.

The protestant cites a number of cases supporting the generally recognized rule of law that it is incumbent upon a common carrier of freight to deliver it at destination at the published transportation rate and to allow the consignee a reasonable time in which to remove it from the carrier's property. These cases are not helpful in determining the issues presented for our determination upon this record. The respondents' transportation rates to New York do include delivery in New York, and the lighterage service is performed by them, on flour as well as on many other commodities, without any charge in addition to the transportation rates, unless an additional service is performed. The usual period of 48 hours' free time is allowed for the removal of freight after its arrival in New York, and there is no intimation on the present record that that period is inadequate. We are dealing in the present proceeding with a service special in character, a service rendered at a point short of destination, and a service performed only because the commercial necessities of the consignees are said to demand it. From a purely transportation point of view there is no reason why every carload of flour should not be billed directly to warehouses in New York, there to be inspected and held for sale. Even admitting, for the purpose of argument, that it is incumbent upon the respondents to permit the inspection of flour on the New Jersey piers, it by no means follows that the service should be rendered without charge, or that the amount of free time should be determined by the convenience or commercial exigencies of the New York merchants.

The New York Produce Exchange shows that similar steps taken by the carriers in the past to prevent the undue detention of equipment at the port have not been altogether successful. As a result of the rules previously adopted the storage charges paid by shippers have greatly increased, but the object principally sought has not been



attained, and it is the uniform opinion of the flour merchants that the charges here proposed will have no other effect than to increase their costs. It must be remembered, however, that the rules and charges now under consideration are proposed because the others failed, on the principle that a penalty tends to become more effective as it is made more severe. It is not improbable that the explanation of the failure of the previous rules lies in the fact that the charges imposed upon shippers for storage at the port have been low when compared with the value of the service rendered, and the testimony of flour dealers on the present record to the effect that the service performed on the New Jersey piers is indispensable to the successful conduct of their business tends to confirm this view. Their apprehension that the measures now proposed may not accomplish their purpose indicates that the suspended rules and charges are not unduly severe or excessive.

In *New York Storage*, 40 I. C. C., 265 and 267, we said:

There is much testimony of record concerning the capacity of the respondents' warehouses and piers, the space generally available for the storage of flour, and that available at the time of the hearing; but these considerations bear lightly upon the main issue, which stands out clearly as one of law, involving the respondents' right, as common carriers, to require the removal of freight from their premises within a reasonable time after it has been offered for delivery. These warehouses and piers are furnished by the carriers as an incident to their transportation service, and when the respondents have offered the shippers a reasonable storage period at reasonable charges they have satisfied all the requirements of the law. The flour dealers at New York, however, wish accommodations in excess of a reasonable period, and beyond that which is incident to the transportation service, in order to meet the commercial necessities of their trade in flour. In *Lighterage and Storage Regulations at New York*, *supra*, we said, page 56:

"As already stated, railroad companies are under obligation to store freight only for such period as may be required to afford shippers a reasonable opportunity to remove it.

"In *New Orleans Storage Rules and Regulations*, 28 I. C. C., 605, the Commission said:

" 'This Commission has repeatedly said that it was no part of the duty of a common carrier by rail to furnish warehouses for the storing of articles transported, even though the convenience of its patrons might so require. We have consistently held that carriers might impose such charges as would compel the removal of freight from their depots and freight sheds. We have in several cases sanctioned the imposition of charges like these upon an ascending scale.'

"Reaffirming this principle, the Commission finds that the proposed increase in the storage charge proposed in the rule under consideration is correct in principle and is not excessive, although the testimony indicates that it exceeds the charge for similar service at public warehouses. Inasmuch as it is the desire of the carriers to secure the release of their facilities rather than to prolong the period of storage, it is suggested that a better rule could be established by providing an ascending scale of charges for periods of five days or even of one day each."

The proposed reduction in free time has been justified, and the proposed storage charges have been shown to be reasonable. The orders of suspension should be vacated in both proceedings.

*CLARK, Commissioner:*

The foregoing report proposed by the examiner was served upon the parties for criticism upon the oral argument before the Commission. There is no material controversy as to the facts as stated. As has been seen, the reasonableness of the rule governing free time at the port on export shipments is presented in No. 1010. The conditions at the port have, under the emergencies and exigencies of war, become abnormal. Differing in degree, the same is true of the transportation by rail to the port. The railroads do not contract to carry the export shipments beyond the port. The shipper makes his own contract with the steamship company. The steamship company makes no provision for accepting the freight until it can be placed directly upon the vessel. If the railroad company is, as a result of these arrangements and conditions, forced to hold the shipments, it can not be denied reasonable compensation for the storage thus furnished.

The report of the examiner and the conclusions proposed by him are adopted by the Commission and orders will be entered accordingly.

COMMISSIONERS AITCHISON, WOOLLEY, and ANDERSON, not having been members of the Commission when these cases were submitted, did not participate in the disposition thereof.

47 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1098.

CEMENT TO NEBRASKA (No. 2).

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APPLICATION No. 101 UNDER SECTION 15 OF THE ACT  
AS AMENDED AUGUST 9, 1917, FOR APPROVAL FOR  
FILING OF AN INCREASED RATE, FARE, CHARGE, OR  
CLASSIFICATION.

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*Submitted October 10, 1917. Decided November 8, 1917.*

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The respondents having offered no justification for the proposed increased rates on cement, the suspended schedule is ordered canceled, and the application for approval for filing is denied.

*L. C. Mahoney* for respondents.

*F. C. Taylor* for Missouri Portland Cement Company.

*B. L. Glover* for Iola Cement Mills Traffic Association.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

By schedules, filed to take effect June 1, 1917, August 31, 1917, September 10, 1917, and September 25, 1917, respectively, the Chicago, Burlington & Quincy Railroad Company, Atchison, Topeka & Santa Fe Railway Company, Missouri, Kansas & Texas Railway Company, and the Union Pacific Railroad Company, proposed to increase rates on cement in carloads to points in the state of Nebraska from numerous producing points. Upon protests filed by the Iola Cement Mills Traffic Association the schedules were suspended.

August 27, 1917, an application under the amended fifteenth section of the act for approval for filing of an increased rate, fare, charge, or classification, was filed by the Union Pacific Railroad Company, asking authority to publish increased rates on cement in carloads to stations on the Chicago, Burlington & Quincy Railroad in Nebraska. The reason for the application, as stated in it, is that a readjustment of rates on cement, including increases, was proposed in certain schedules of the applicant to destinations on its branch lines north of Grand Island, Nebr., and to destinations on the Chicago, Burlington & Quincy Railroad in Nebraska; that the schedules containing the proposed increased rates were suspended and are under consideration in Investigation and Suspension Docket No. 985, *Cement Rates to Nebraska*; that that proceeding has been consoli-

47 I. C. C.

dated with the *Cement Investigation*, Docket No. 8182; that at the time rates were not readjusted and increased from Bonner Springs; and that the application is made to publish rates in line with those proposed in the schedules involved in Investigation and Suspension Docket No. 935.

No justification was offered by any of the respondents, nor by the applicant for the proposed increased rates. It was conceded by the carriers that the whole question of rates on cement in the territory here involved is under consideration in the *Cement Investigation*, *supra*.

The schedules naming the proposed increased rates will be ordered canceled, and the application under the amended fifteenth section will be denied.

47 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1010.

EXPORT FREIGHT FREE TIME.

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*Submitted October 4, 1917. Decided November 12, 1917.*

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1. Respondents having failed to justify the proposed reduction from 15 to 5 days in the free time allowed on export traffic at the north Atlantic ports; and from 10 to 5 days at the Gulf ports, schedules under suspension required to be canceled; without prejudice to the filing of new schedules providing for not less than 10 days' free time at the north Atlantic ports, and not less than 7 days at the Gulf ports, which periods are found to be reasonable under existing conditions.
2. Proposed reduction from 10 to 5 days in the free time applicable to bunker coal at the ports of New Orleans, Mobile, and Pensacola, found to have been justified.

*Jackson E. Reynolds* for Philadelphia & Reading Railway Company and Central Railroad Company of New Jersey; *Douglas Swift* for Delaware, Lackawanna & Western Railroad Company; *John M. Sternhagen* for New York Central Railroad Company; *M. B. Pierce* and *G. W. Kirtley* for Erie Railroad Company; *Charles R. Webber* and *Archibald Fries* for Baltimore & Ohio Railroad Company; *George R. Allen* for Pennsylvania Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; and New Jersey & Seashore Railroad Company; *C. B. McManus, jr.*, for New York, Ontario & Western Railway Company; *H. C. Burnett* for Lehigh Valley Railroad Company; *George P. Bagley* for Western Maryland Railway Company; *Edward D. Mohr* for Louisville & Nashville Railroad Company; *Edward D. Mohr*, *William A. Colston*, *R. Walton Moore*, and *Alexander H. Elder* for respondents generally; *Joseph Lallande* for Morgan's Louisiana & Texas Railroad & Steamship Company and Louisiana Western Railroad Company; *Frank A. Mooney* for Illinois Central Railroad Company; *J. A. Shepherd* and *Esmond Phelps* for Texas & Pacific Railway Company and Trans-Mississippi Terminal Railroad Company; *M. P. Billups* and *J. P. Taylor* for Mobile & Ohio Railroad Company and Southern Railway Company; *G. B. Auburtin* for New Orleans Great Northern Railroad Company; *J. H. Keefe* for Demurrage Committee for Galveston Bay lines; *E. C. D. Marshall* for Louisiana Railway & Navigation Company; and *B. M. Flippen* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

*Charles S. Belsterling* and *L. Pfeiff* for United States Steel Corporation; *H. G. Wilson*, *Charles L. Roos*, *F. H. Price*, and *Mark Mennel* for Millers' National Federation and Toledo Commerce

Club; *James C. Lincoln* for Merchants' Association of New York; *Samuel D. Snow* for International Harvester Corporation; and *Harvey M. Dickson* for National Lumber Exporters' Association.

*Borders, Walter & Burchmore*; *A. W. McLaren*; and *H. P. Park* for Morris & Company; *R. S. French* for National League of Commission Merchants and International Apple Shippers' Association; *W. H. Chandler* for Boston Chamber of Commerce; *Herbert Sheridan* for Baltimore Chamber of Commerce and Canned Goods Exchange of Baltimore; *H. K. Crafts* and *W. W. Manker* for Armour & Company; *Frank E. Williamson* for Buffalo Chamber of Commerce; *C. B. Baldwin* for United States Shoe Machinery Company; *G. M. Freer* for National Industrial Traffic League and Cincinnati Chamber of Commerce; and *W. J. Conley*, *D. A. Froelich*, *Richard P. Montgomery*, and *E. H. Brown, jr.*, for Union Petroleum Company.

*R. D. Rynder* for Swift & Company; *Benjamin C. McPherson* for Sun Company; *Arthur W. Ruike*, *Neill P. Cullom*, and *Charles J. Austin* for New York Produce Exchange; *A. S. Wilson* for Cincinnati exporters; *C. J. O'Brien, jr.*, for Westinghouse Electric & Manufacturing Company and Westinghouse Electric Export Company; *George P. Wilson* and *N. B. Kelly* for Philadelphia Chamber of Commerce; *A. E. Beck* for Merchants & Manufacturers' Association of Baltimore; *Edward V. Douglas* for American Manufacturers' Export Association; *George W. Bankell* for D. C. Andrews & Company, Incorporated; *Thomas O. Cole* for Bethlehem Steel Company; *Arthur B. Hayes* for American Meat Packers' Association; *W. R. Brown* for Wilson & Company; *Franklin Taylor* for Certain-teed Products Corporation; and *R. F. Bausman* for Washburn-Crosby Company.

*L. M. Nicholson* and *John A. Smith* for New Orleans Joint Traffic Bureau; *James F. Phillips* for A. A. Brown & Company, Cary & Company, Pensacola Supply Company, Pensacola Shipping Company, Pratt Consolidated Coal Company, and J. A. Merritt & Company; *O. L. Bunn* for Birmingham Coal District; *R. D. Reeves* for W. G. Coyle & Company, Incorporated; *H. C. Donaldson* for River Coal Company; *W. A. Bisso* for New Orleans Coal Company; *R. W. Lightburn, jr.*, for Southern Millers' League; *A. G. T. Moore* for Southern Pine Association; *W. B. Russe*, *George Land*, and *J. H. Townshend* for Southern Hardwood Traffic Association and National Lumber Exporters' Association; *H. H. Haines* for Galveston Commercial Association; *J. L. George* and *J. A. Morgan* for Houston Chamber of Commerce; *W. T. Hancock* for Kirby Lumber Company; and *W. M. Barrow* for W. G. Coyle & Company, Incorporated, New Orleans Coal Company, and River Coal Company.

## REPORT OF THE COMMISSION.

WOOLLEY, *Commissioner*:

This is a proceeding of inquiry as to the propriety of the proposed reduction to five days in the time during which carloads of export freight, except bulk grain, may be held in cars, stored on piers, or in warehouses of respondents at their terminals at Atlantic Ocean and Gulf of Mexico ports without incurring storage charges. Under existing schedules the time in which export freight may be held or stored without charge at the Atlantic ports is 15 days and at the Gulf ports 10 days, with certain exceptions hereinafter noted. Schedules of the respondents providing for the reduction in free time were filed, in most instances, to become effective February 1, 1917. A few of them were to become effective at later dates. Upon numerous protests of exporters all were suspended until June 1, 1917, and later postponed to December 1, 1917.

No change in free time is proposed at Charleston, S. C., and Savannah, Ga. This proceeding, therefore, naturally divides into two parts; on the one hand, the proposed change from 15 to 5 days at the Atlantic ports, Newport News and Norfolk, Va., to Boston, Mass., inclusive, and, on the other hand, the proposed change from 10 to 5 days at the Gulf ports, Pensacola, Fla., to Galveston, Tex., inclusive. At the Gulf ports it is also proposed to reduce from 10 to 5 days the free time now allowed on coal for ships' bunkers. The hearings were conducted so that evidence with respect to the proposed reduction at the Atlantic ports was submitted in New York City and the Gulf ports in New Orleans. Consideration will be first given to the Atlantic ports.

Shipments for export are made under through bills of lading, which provide for transportation from interior points in this country to foreign destinations, and under port or local bills of lading to the ports, marked for export. Under each form of billing the rates published by the rail carrier provided for delivery of the freight at ship side at the ports and in either case there is no difference in the transportation service rendered to the ports, or at the ports. With respect to shipments moving under through bills the rail carrier secures from the owner or agent of the vessel the permit to load, and with respect to those moving under local bills for export the consignee at the port secures such permit. About 90 per cent of export traffic through the port of New York moves under port bills, and approximately that percentage appears to prevail at the other ports. The evidence in the main relates to conditions at New York.

Because of frequent and regular sailings of vessels from the port of New York, and because many vessels leaving that port reach foreign destinations not reached by those leaving other American



ports, the movement of export freight through New York is very large.

It is not necessary here to describe in detail the manner in which freight for export is handled through the port of New York. It is sufficient to state that the rail terminals of respondents are on the New Jersey shore and Staten Island, and that the New York Central has one of its freight terminals at Sixtieth street, on Manhattan Island. From each of the terminals the transportation of freight for export undertaken by respondents is completed by means of car floats or lighters. The former carry loaded cars and the latter freight which has been unloaded from cars. Freight for export which arrives at the terminals from interior points is held there in cars, or is stored on respondents' piers or lands, awaiting orders for disposition or for acceptance by vessels. When orders are given by consignees, or when ships' permits are granted, the cars, in lots of not less than six, are floated to ship side, or the freight is lightered from the terminals. On arrival of cars at respondents' terminals the consignee is notified if the freight is billed locally for export, and the ship's agent is notified if the shipments are billed through. The free time begins from the first 7 o'clock a. m. after notice of arrival has been mailed and includes Sundays and holidays.

For a great many years export traffic was granted unlimited free time at the ports. On September 1, 1914, the free time was made 60 days; early in 1915 it was reduced to 30 days on traffic billed locally for export; and on April 10, 1916, it was further reduced to 15 days, applicable to all export shipments, and the propriety of a further reduction to five days is the issue in the present proceeding.

The free time now allowed on domestic shipments to New York is five days at the terminals and two days after delivery on piers, in warehouses, or at industries. At the other ports the free time on domestic traffic is 48 hours. Schedules proposing to reduce the time at the terminals in New York to two days have recently been found justified by the Commission in *Hold Freight Free Time*, 47 I. C. C., 141.

The storage charges on shipments of export freight held in cars, warehouses, or on piers at the port of New York are now one-half cent per 100 pounds for each period of 5 days, or fraction thereof, after the expiration of 15 days' free time, for the first six periods of 5 days each; 1 cent for each 5-day period for the next six periods of 5 days each; and 2 cents for each succeeding 5-day period. Proposed increases in these charges were found justified in *New York Harbor Storage*, 47 I. C. C., 141.

The proposed storage charges on traffic included in the general term of "house freight," in cars, warehouses, or on piers are 1 cent for each period of five days, or fraction thereof, for the first four periods of five days each after the expiration of the free time; 2 cents for each period of five days, or fraction thereof, for the next four periods of five days each; and 4 cents for each succeeding five-day period. The proposed increase in storage charges is applicable at the port of New York only. At the ports of Boston, Philadelphia, Baltimore, Newport News, and Norfolk the present charges are 1 cent per 100 pounds for the first 10 days, or fraction thereof, beyond the free time and one-half cent for each succeeding period of 10 days or fraction thereof. It is not proposed to increase the charges at these points. Storage charges are not involved in this proceeding, but protestants insist that they should be taken into consideration in passing upon the reasonableness of the proposed reduction in the free time, because either a reduction in the free time or an increase in the storage charges operates to increase the total transportation charges paid by shippers.

The average detention of cars loaded with export freight at the port of New York is stated by respondents to be eight and one-half days. During the past two years an extreme and unprecedented condition of congestion of freight in cars and on piers of respondents has prevailed at the ports on the Atlantic seaboard. This is particularly true of New York, but has been the condition at all ports. The congested condition of the terminals of respondents was brought about by an enormous increase in the volume of export freight and a general demoralization of inland transportation and ocean movement, particularly during the past year. Ships' space has been frequently commandeered by foreign governments after contracts for certain shipments had been entered into and the freight was at the terminals, resulting in refusal of the ship to accept the freight. Owners have hesitated to sail their vessels to and from foreign ports because of the dangers of submarine attack. It happens many times that ships in which exporters have contracted space do not come to the designated port, but are diverted to another port. New contracts for space in other ships must then be negotiated, and the result is that export freight remains on respondents' piers or is held in their cars awaiting vessel movement. The day before the hearing the New York Central had 5,164 carloads of export freight on hand awaiting shipment through the port of New York, exclusive of bulk grain held in elevators, including 1,960 loaded cars. The remainder was stored on piers, in warehouses, or on land. It was stated by representatives of the Erie and Baltimore & Ohio that there is now no congestion on their piers or in their cars in New York. It was

also stated that there is no congestion of export freight at the ports of Boston, Philadelphia, and Baltimore.

At the time of the hearing respondents, with exceptions as to certain food products, not necessary to be considered in detail, had in effect a general embargo at the Atlantic ports on carload freight for export. As a modification of the embargoes, permits were issued by respondents' foreign freight agents at the ports upon assurance by steamship agents that vessels would sail and that shippers to whom the permits were issued had contracts for space. These permits were filed with station agents at points of origin of shipments and constituted such agents' authority to accept the freight designated in the permits, provided it was shipped within a reasonable time named in the permits.

To justify the proposed reduction in time, the respondents testified that the primary object is to secure the release of cars, relieve terminals, and promote greater car efficiency; and that the secondary object is to enlist cooperation of shippers, consignees, and shipowners to so coordinate the export business that all unnecessary delays at the ports may be eliminated. It is insisted that if storage charges, based on the proposed reduction in free time, are imposed and exporters find they can not retain cars without expense, they will exert pressure upon steamship companies to assume their just obligation to receive at their piers or warehouses export freight intended for them, thus bearing the burden usually borne by the next succeeding carrier in the direction of destination. It is shown that as a rule neither the steamship companies operating from the port of New York nor the exporters have pier space or warehouses for the receipt of export freight, and therefore whatever storage is necessary is in or on property of the respondents. Heretofore it has been impossible to secure cooperation in expeditious handling of export freight from respondents' cars and piers on the part of exporters and steamship companies. It is the opinion of some of the respondents that an appeal to their self-interest through the jeopardy of incurring storage charges, that will result from the reduction of free time, will secure cooperation where solicitation and persuasion in the past have been ineffective to bring about that result. It is contended by respondents that if they are given such cooperation a very high percentage of cars loaded with export traffic can and will be released and restored to proper transportation service within five days of their arrival at the seaboard terminals. While some doubt was expressed by some of the respondents' witnesses as to the extent of the relief which would result from the proposed remedial measures under existing conditions, they nevertheless insisted that in any event they were entitled

to compensation for the use of their facilities for storage purposes after the expiration of the free time proposed.

Respondents assert that at the port of New York the service is very expensive because of necessary lighterage. Delay in the movement of export freight monopolizes, to a large extent their terminals on the New York and Staten Island sides of the harbor, as well as the terminal of the New York Central on Manhattan Island, which adds to the expense of the service. Exhibits prepared by accounting officers of the Central Railroad of New Jersey were submitted to show that on local and through billed export traffic the returns to that carrier for the line haul, deducting the lighterage charges and per diem accruals, are very low; in most cases less than 2 mills per ton per mile. On brief it is contended that the showing made by the Central Railroad of New Jersey is illustrative of the general situation, and that under existing liberal free time and storage rules respondents suffer a loss on a considerable portion of their export business, because delivery expenses exceed the revenue received. This contention is not supported by evidence as to the yield by the various respondents from their export traffic.

It is contended by respondents that transportation service rendered by them to points of delivery in New York on domestic and export traffic is identical; that conditions in the recent past, the present, and immediate future do not warrant any more liberal storage arrangements for export than for domestic shipments; that conditions under which concessions to exporters were made no longer exist; that in times past respondents were operating under different conditions than those which obtain to-day; that in former times it was to their interest to encourage export traffic, thus to add somewhat to domestic business; that in order to get such traffic they made low rates and extended liberal privileges; that at the time there was no problem of congestion such as exists to-day; that the aim was to secure enough traffic to utilize the terminals; that equipment was lying idle; and that at the present time both equipment and terminals are being operated to maximum capacity. Competition between ports and between rival carriers to the same ports led in the past to abuses and impositions upon respondents of unlimited free storage of export freight. Every port and every railroad is now overwhelmed with export freight and the competitive conditions have disappeared. It is further asserted by respondents that while it may be true that the benefit of the proposed reduction may be much greater under normal conditions than under the present unusual conditions, a more opportune time than the present for with-

drawing concessions could hardly be selected; that the whole commerce of the country needs corrective transportation measures; and that the prosperity of exporters is such, and the prices realized by them are so high, that the shortening of the free time will not seriously affect them.

With respect to the situation at Philadelphia the respondents assert that the same circumstances prompted the adoption of the proposed reduction of the free time at that port as influenced its adoption at New York. The primary and secondary effects from the reduction are expected to be the same at both ports. Railroad conditions are not materially different, except that a much smaller percentage of freight is lightered at Philadelphia. It is asserted that substantially the same conditions prevail at Baltimore as at Philadelphia. It is the opinion of respondents' witnesses that five days' free time is sufficient at the ports of Philadelphia and Baltimore to enable them to place export freight at ship side after its arrival at rail terminals.

Protestants insist that five days is an unreasonable time within which to make delivery of export freight in New York harbor or at the other Atlantic ports; that the reduction in time will not result in more prompt release of cars, nor will it relieve respondents' piers or warehouses; and that the only result will be to increase the revenue of respondents at the expense of exporters in this country. Among the largest exporters in the United States are Armour & Company, Swift & Company, Morris & Company, and Wilson & Company, packers of meat and dealers in food supplies at various points. These concerns protested against the proposed reduction of free time and appeared at the hearing. They ship abroad large quantities of fresh meats, packing-house products, butter, eggs, cheese, dressed poultry, and canned goods. Practically all of their shipments move in privately owned refrigerator cars. In no case are cars of respondents used for shipments of fresh meat. These protestants have forces of men at the ports to look after the movement of export traffic. Swift & Company and Armour & Company each export about 1,000 carloads per month. During the year 1916 Armour & Company exported about 12,000 carloads, 10 per cent of which moved through Canadian ports and the remainder through the north Atlantic ports, but principally through New York. Their shipments are made to all open ports of the world. The large percentage of shipments through New York, as before stated, is because of the comparatively frequent sailings from that port, and because vessels leaving there reach all foreign ports and sail to many ports not reached by vessels moving from any other port in the United States.



The marked condition of congestion existing in New York at this time, and the chronic state of congestion that exists there, might be relieved to a considerable extent if vessels were to serve other ports of the country to which there would be a much shorter rail haul. This possible solution of the congestion that prevails at New York suggests itself when consideration is had of the fact that exporters send shipments via New York even though it involves rail hauls of almost the entire length of the continent.

It is contended by the exporters of fresh meat, packing-house products, etc., that they do all they can at the Atlantic ports to expedite the movement of their shipments from respondents' terminals to ship side. They cooperate with respondents' foreign freight departments, and take it on themselves, when cars from the interior do not arrive in time to connect with vessels for which they are booked, to secure new vessel space, obtain permits, and so lessen the burden upon respondents.

These exporters state that it is as important a consideration to them to release loaded cars as it is for respondents to have them released; that the private cars in which their shipments are transported earn mileage only when they are moving; that in the present state of car shortage throughout the country the matter of earning mileage is less important to them than release of the cars so that they may be used for other loads; and that cars held at the terminals are required to be iced constantly at higher charges than are required for transit icing. It is estimated by Swift & Company that the reduction in free time would require them to pay \$15,000 per annum in additional storage charges, and would not, no matter how they operated their business, under present conditions, result in the earlier release of a single car. Armour & Company estimate that their storage charges would be increased \$16,200 per annum.

A witness for Swift & Company testified that it is to the interest of the company to expedite the unloading of cars at the port terminals, and that objection to the proposed rule is not based on a desire to hold cars longer than necessary. A general order was issued by that company on October 25, 1915, which is still operative, to the effect that all the less perishable export products should be unloaded immediately upon arrival at the port, provided suitable storage space could be arranged for, and that only the more perishable property which might be spoiled if removed should be held in cars. The following exhibit filed by the witness for Swift & Company shows detention of cars at New York during the month of March, 1916, when the free time for through-billed shipments was 60 days, and during the month of January, 1917, when the free time for through-billed shipments was 15 days:

March, 1916.		January, 1917.	
Number of cars.	Number days held.	Number of cars.	Number days held.
97	1	13	1
73	2	38	2
78	3	36	3
52	4	66	4
62	5	40	5
40	6	78	6
37	7	38	7
65	8	42	8
21	9	66	9
35	10	32	10
62	11	8	11
7	12	77	12
19	13	27	13
34	14	54	14
5	15	29	15
6	16	27	16
4	17	33	17
21	18	23	18
11	19	28	19
10	21	29	21
14	22	29	22
1	23	11	23
1	24	8	24
2	25	2	25
1	28	7	26
7	31	13	27
9	36	10	28
1	37	8	26
		7	28
765	15,979	887	110,044
Average detention per car, 7.81 days.		Average detention per car, 11.32 days.	

<sup>1</sup> Total days' detention.

This exhibit does not mean that no storage was assessed under the 15-day rule because of the average detention of 11.32 days. Storage was charged on all cars which were detained for more than 15 days. The permit system of respondents was in effect during both months.

With reference to the irregularity of transportation from the inland shipping point to the port, Swift & Company submit an exhibit showing the number of cars shipped to New York from Chicago during the month of January, 1917, and the time consumed in transit, as follows:

Number of cars.	Number of days in transit.	Percentage of total.	Number of cars.	Number of days in transit.	Percentage of total.
51	4	8.5	37	10	6.2
67	5	11.2	18	11	2.9
143	6	23.8	22	12	3.7
134	7	22.3	9	13	1.4
72	8	11.9	4	14	.6
42	9	7.0	3	15	.5

Average time in transit, 9.5 days.

Shippers of export freight endeavor to estimate the time required to transport shipments from inland points to the ports and to for-



ward them a sufficient length of time before the sailing date of the vessel for which they are booked to enable them to reach the port and be loaded in the ship within the free time.

It appears from the last exhibit that the difference between the maximum time of 15 days and the minimum time of 4 days consumed by the rail carrier in transporting the shipments from Chicago to New York is 11 days, or more than twice the free time proposed to be allowed at the port. If the shipper, to be on the safe side, should allow 15 days for the transportation, and the shipments should reach the New York terminals in 4 days, he would incur storage charges for 6 days. On the other hand, if the shipper should count on 4 days, the vessel for which his shipment was intended may have sailed, as the exhibit shows that about 45 per cent of the shipments required 6 to 7 days. If he calculated on the average time of 9.5 days and the carrier performed the service in either the maximum or minimum time he would incur storage charges. The exhibit takes no account of any irregularities in terminal service at New York.

Exhibits of a similar character to those submitted by Swift & Company to show delays in rail transportation were also submitted by Armour & Company, but it is not necessary to set them forth here, as they show substantially the same conditions.

Packing-house products, fresh meat, dressed poultry, etc., are highly perishable and are moved from inland points to the ports in what are called "manifest" or "symbol" trains. These trains are scheduled to make faster time and to move with greater regularity than ordinary freight trains. Armour & Company are now allowing from 48 to 72 hours' additional time on shipments from all points than was formerly allowed because of conditions which now prevail with respect to inland transportation.

The International Harvester Corporation manufactures and purchases agricultural implements, large quantities of which are shipped to foreign markets. Because of war conditions export shipments of this corporation have decreased somewhat below those in normal times. They are still very large. The shipments made by it move from various points in Illinois, Wisconsin, Ohio, and New York. The greatest volume originates at Chicago and is exported through the port of New York. Practically all the shipments made by the corporation are on bills to the port, marked for export.

The foreign freight agent of this concern resides in New York and has a force of men engaged in expediting export shipments. He testified that it is impossible to make delivery of export freight at the port of New York in five days at the present time, nor would it be pos-

sible to do so when the war is at an end and normal times return. He testified that conditions in normal times are precisely the same as at present, only in a lesser degree; that steamers will always be irregular; that regular line steamers because of weather conditions often reach the port four or five days late; that steamers sailing on schedule must turn back; that because of their passenger arrangements they sometimes refuse to receive freight and sail from the port without it; and that certain steamers carrying mail are under heavy penalties if they do not move on certain dates. It is his opinion that if rail carriers would recognize some responsibility and allow reasonable time in which to bring freight to the seaboard, and live up to that time, ships would be able to provide a better and more efficient service.

The exporters of flour shipping on local bills for export testified that it is not possible for them to clear freight from terminals of respondents in five days at any time under conditions that exist at the port of New York. It is shown that flour must be unloaded and inspected before it is available for delivery to vessels. The requirements of the New York Produce Exchange and of foreign nations make inspection imperative, and blending and repacking is also required in many cases. It is insisted that exigencies of the flour business are such that flour in respondents' cars at the terminals is as unavailable to the exporter as though the cars had not reached the terminals. Free time is computed from the first 7 o'clock a. m. after notice of arrival of goods is sent, and it is asserted by flour exporters that many times when notice is sent the cars are in the outer yards of respondents and not available to them. Storage is assessed up to the day of delivery, provided the carrier accepts the exporter's delivery order. It is shown that lighterage departments of respondents require at least two days' time to effect delivery, and in many instances they reserve the right to, and do, demand four days' time. It is insisted that New York flour exporters do everything in their power to have all cars unloaded immediately upon arrival at the terminals, because the flour is not available for export until it is unloaded. The inspection is not for the purpose of effecting a sale, as practically all export flour has been sold previous to its arrival at New York. These exporters contend that flour on port bills for export is not delivered until it is unloaded where it may be inspected, and that the assessment of storage charges previous to such unloading is unlawful. That question is not presented here for determination.

Numerous exhibits were filed by flour exporters to show irregularities in the rail movements to the ports.

These shippers testified that when notice of arrival is received some time is required for necessary office routine and furnishing lighterage disposition orders, also that they require five days' free time to accomplish necessary inspection and examination and that it is impossible to clear shipments for export from carrier's terminals in New York in five days. However, as stated in our report in *Hold Freight Free Time, supra*, the amount of time to be accorded this traffic is not properly to be determined by the purely commercial conveniences and exigencies of the flour trade.

Flour moving on through export bills is not required to be inspected. It is sold under recognized brands. It is shown that it is a necessity of the business, especially of the country miller, that flour be shipped under through export bills. His flour is sold f. o. b. the mill, and the through freight charges are added. Storage charges must be paid by the exporter. The Washburn-Crosby Company, since the outbreak of the war, has had representatives in New York who attempt to expedite the movement of the flour from Minneapolis and Buffalo and to assist in its movement from respondents' terminals to ship side. A witness for this company filed an exhibit showing shipments made from Minneapolis and Buffalo on through bills via New York. The exhibit in brief shows that the variation in time of transit from Minneapolis was from 6 to 58 days, and from Buffalo 2 to 34 days. The witness was of opinion that under present conditions or under normal conditions practically every car-load of flour would incur demurrage charges at New York under the provision for five days' free time.

The Millers National Federation, an organization of flour millers and exporters at interior points throughout the country, insist that there should be no limitation of free time at the ports of the country on shipments moving under through export bills of lading; that the existing free time at the Atlantic ports is unlawful, as shipments on arrival at the terminals are not delivered and delivery can not be accomplished short of the billed destinations; that shipments on through bills are in transit at the ports; and that there is nothing that the shipper in the interior can do to expedite the movement. It is recognized by the federation that the issue in this proceeding is as to the justification of the respondents for the proposed reduction in free time from 15 to 5 days. It wants it to be understood, however, that its appearance in this proceeding is not to be construed as a waiver of its right to test the lawfulness of any limitation of free time on shipments of flour moving through the ports under through export bills of lading. The question of the lawfulness of storage or demurrage charges at the ports on traffic moving to foreign destina-

tions under through bills of lading has been passed upon in *New York Produce Exchange v. B. & O. R. R.*, 46 I. C. C., 666, 671, and is also pending for determination in another proceeding before the Commission, In the Matter of Bills of Lading, Docket No. 4844.

At the hearing the chief exporters of steel products withdrew their protest and acquiesced in the proposed tariff going into effect.

Exporters of shoe machinery, oil, matches, paper, machinery, rugs, shovels, hand agricultural implements, lawn mowers, lumber, axles and springs, bolts and nuts, pumps, steel bars and beams, and steel sheets were represented, and exhibits were filed showing the variation in deliveries of shipments at New York from various points. It is sufficient to refer only to two of them as illustrative. In 1916 an exporter ordered seven carloads of shovels to be transported to New York for export. The cars were from 6 to 48 days in transit from Charleroi, Pa., 480 miles from New York. The average time in transit was 25 days. The same exporter ordered shipped to New York, in 1916 and 1917, 60 carloads of bolts and nuts from North Tonawanda, N. Y. The cars were from 3 to 19 days in transit. The average time was 6 days. The distance is 439 miles.

It is further shown by protestants that there are very frequently serious delays in making delivery at the port of New York after the shipments arrive at the terminals. For example, it is shown by Swift & Company that two cars of packing-house products were billed from Chicago via the Grand Trunk and Lehigh Valley for the French line steamer *Espagne*, scheduled to sail on January 6, 1917. The cars arrived at the Jersey City terminal January 1, or six days ahead of the advertised sailing date, and about eight days after shipment. A lighterage order was lodged with the Lehigh Valley January 2, calling for delivery January 4, allowing 48 hours for the purpose. The delivery was not effected, and the property missed the vessel. It was returned to Jersey City and redelivered on January 15 for the French line steamer *Chicago*, sailing January 18. The failure in terminal service delayed the shipment from the permitted delivery date of January 4 to January 15, or 11 days. Another car was shipped from Chicago November 25, 1916, and arrived in New York via the Erie on December 16. It was billed to move on the Quebec line steamer sailing December 18. It arrived two days before the sailing date. Owing to the failure of the Erie to make delivery at the port, the car was not placed alongside the ship within the permit time, and the freight had to be held until the next sailing date, which was February 3, 1917. The car was held under storage from January 4, 1917, until January 30, 1917.

At the hearing a controversy arose as to the time storage charges on export traffic cease. The proposed schedule of the Erie Railroad Company has the following provision respecting free time on export freight moving under through export bills of lading:

Freight covered by through export bills of lading will be held in warehouses or in cars at Croxton, N. J., Jersey City, N. J., or Weehawken, N. J., free of charge for period not exceeding five days, exclusive of day of arrival; thereafter the storage charges as per rule 3 will be applied.

The provision in the suspended schedule of the Erie Railroad Company respecting freight movement under bills of lading to the port for export is as follows:

Freight which under the rules named in this tariff is entitled to free lighterage consigned in shipping order and bill of lading for export will be held free of charge in warehouses or in cars at Jersey City or Weehawken, N. J., for a period of five days, exclusive of day of arrival; thereafter the storage charge as per rule 3 will be applied.

Rule 3 referred to does not specify the time when storage charges on export shipments will cease, nor is there a provision in any schedules of the Erie which names such time. The above provision, with the exception of points where shipments will be held, is substantially the same as contained in schedules of each of the respondents reaching the port of New York.

It is the contention of protestants that under schedules now in effect, and under the suspended schedules, storage charges are assessable to the time shipments are delivered alongside vessels. Certain defendants stated that the practice was not to collect storage charges after consignees had ordered their freight to ship side, or the ship's permit to load had been received by them. Numerous bills for storage charges were submitted by protestants showing that certain of the respondents had made charges after orders of shippers had been tendered and accepted. The practices of respondents in this regard are not uniform. So far as the schedules are concerned they do not provide that storage charges shall cease at any particular time, and in practice some of the respondents charge storage until the shipments reach ship side, and some do not make any charge after the receipt and acceptance of the order to move shipments from terminals. It was agreed at the hearing that the respondents should submit a statement to the Commission as to their construction of the free time schedules and state whether storage charges are collected after ship's permit to load is secured, in case shipments move under through export bills of lading, or the shipments are ordered to ship side under local bills for export. The statement was submitted; but it does not show that storage charges will cease on the date the



ship's permit is issued, or when the consignee tenders his order. Among other things not necessary to consider the statement in explanation of the operation of the free time rule at New York contains the following:

If the order for delivery to steamship line is tendered and accepted by the railroad which permits delivery to the steamship line prior to the expiration of the free time period \* \* \* no storage charge is made.

It will be noted that the practice under the free time schedules is no more certain than the schedules themselves. Whether storage charges shall accrue after notice is given is made to depend on two contingencies: On the acceptance by the railroad of the order, and if the time given permits delivery within the free time. Storage charges should cease on the date the order of the shipper is tendered to the rail carrier, or on the date the ship's permit to load is received by such carrier. It is to be remembered that the shipper must secure the ship captain's permit to load before he orders his shipment to ship side, and in case of through billed shipments the ship's permit to load is given the rail carriers' representative. If there is any delay in delivery to ship side after the receipt of the permit, or the order of the shipper, it is due to the neglect of the rail carrier to complete the transportation its tariffs and rates provide for. Any rule or practice that continues storage charges after the tender to the rail carrier by the shipper of an order to move his shipments to ship side, or after receipt by the rail carrier of the vessel's permit to load, is unreasonable.

Have the respondents justified the reduction in time which they propose?

These are extraordinary times. Our nation has entered the great war that has been raging in Europe for more than three years. Shippers of the country are now and have been for more than a year, experiencing car shortages, terminal congestion, and transportation difficulties to an extent never before known. The Commission, in recognition of the untoward conditions, has in numerous recent cases sanctioned increased demurrage and storage charges and permitted reductions in free time to the end that freight cars should be kept on the move, and demands of shippers and receivers of freight measurably complied with. As before stated, for a great many years the exporters were allowed unlimited free time at the ports in which to provide for transshipment of freight from car to vessel. In the year 1914 the free time was made 60 days; the following year it was made 30 days, and the next year 15 days. Exporters of the country have generally acquiesced in the reductions of time so far made, in

the hope that transportation conditions would improve and that needed cars would be released to transport both the domestic and foreign commerce of the nation. It appears that under the most favorable conditions at the port of New York five days' free time is about as short as could with justice be made on export shipments. The lighterage departments of respondents now demand from two to four days to make delivery from their terminals to ship side, and there frequently are untoward delays in getting cars from terminal yards and piers for loading in lighters or on floats. Present conditions may continue for some time. Even if peace is declared at an early date it will probably take a long time for the nations of the world to regain normal conditions. Some exporters expect largely increased shipments after the war is at an end. There will be no export shipments of war munitions in times of peace; but rehabilitation of devastated regions abroad and the demand for food and other supplies will doubtless continue shipments to Europe in increased quantities for some time to come.

It is unfortunate that so large a part of the foreign commerce of the country moves through one port, and that one where conditions are unfavorable for expeditious handling. If the foreign commerce of the country may in the future be so directed as to relieve the congested conditions at New York, which, as stated by one of respondent's witnesses, are chronic, surely it is a matter of some time before changes in the routes of ships and ports which they shall serve can be made. The respondents which reach New York would probably be the first to object to any change of conditions that would divert traffic from them. If shipowners should decide at once to erect piers on the New Jersey shore, where it is stated in this record there is ample vacant land, a year or more would be required to build them and to dredge water approaches. In the meantime exporters who find it necessary to send their shipments through New York must do so under existing conditions.

The free time at the terminals in New York on domestic shipments is now five days, shortly to be reduced to 48 hours; and it is asserted by respondents that there is no reason why there should be longer free time on export shipments; and that any longer time than that applicable to domestic traffic is in the nature of a gratuity or concession which the carriers may grant but which this Commission may not legally require. The circumstances and conditions which are controlling with respect to export traffic are substantially dissimilar from those which obtain with respect to domestic traffic. The rates of respondents provide for the carriage of export traffic to ship side; therefore, the transportation undertaken by them is not completed



when the freight arrives at the New Jersey terminals. It has long been recognized as a necessity of export business that sufficient time, within reasonable limits, must be given to enable the export shipper to accumulate his cargo and arrange for its receipt by the vessel. Under existing conditions, after such arrangements have been made, the carriers themselves require from two to four days to make delivery by lighter or car float from their Jersey shore terminals to ship side and thus complete the transportation which they hold themselves out to perform under the published freight rate. It will thus be seen that any rule which did not make allowance for the reasonable necessities of the situation with respect to export traffic would in practically every instance result in improper and unjust assessment of storage charges against the shipper. Export traffic must be forwarded from the inland point in ample time to reach the port not only previous to the sailing of a vessel, but a sufficient time in advance of such sailing to enable respondents to effect vessel delivery. No such condition exists with respect to domestic freight, because, ordinarily, it is a matter of indifference to a consignee on what particular day the domestic freight may reach its destination. Delay in transportation of domestic shipments does not necessarily result in imposing demurrage charges upon the consignee, for, in general, there is no reason why he can not remove his traffic from the carrier's property as well at one time as at another. Another essential difference between the domestic and export traffic is that domestic traffic is not transported beyond the terminal by a separate water carrier. It is true that domestic shipments are lightered to destinations in New York City, but they have two days' free time after delivery at destination.

This Commission has frequently expressed the view that carriers are justified in establishing such car service rules as will tend toward the prompt release of equipment; that storage charges represent in part compensation to the carriers for the use of their equipment beyond such reasonable time as may be necessary to remove the traffic and in part a penalty for the failure of the shipper to act promptly in that direction; that the business of carriers is transportation and not storage, and that the shipper has no legal right to use a car as a warehouse; and that it is in the interest of shippers as well as carriers that all cars be released as promptly as possible.

There can be nothing clearer at this time than that it is all important that freight cars be kept moving and terminal congestion obviated. Any reasonable action upon the part of carriers in that direction is manifestly in the public interest, and should not only be approved but encouraged by the Commission. Shippers are every-

where demanding that the carriers of the country shall furnish more and better transportation facilities. Just at this time, for reasons too well known to require detailed discussion, it is difficult if not impossible to secure additional cars or make extensive enlargements of terminal facilities within a reasonable time. Therefore, the only alternative is to make the existing equipment serve to the maximum.

This record shows that the average detention of cars loaded with export freight at the port of New York is now about eight and one-half days. In dealing with a situation of this kind, the average condition is to be considered in arriving at proper conclusions rather than the unusual or extraordinary instances which result in detentions for materially longer periods than the average. The free time now allowed at this port on coastwise traffic is 10 days. With respect to transfer from cars to ship, there is no substantial difference between export and coastwise traffic.

From a consideration of the whole record, we are of the opinion, and find, that the respondents have justified a reduction in the free time allowed on export traffic at the port of New York to 10 days. In this view, an order will be entered requiring cancellation of the suspended tariffs proposing the 5-day period, without prejudice to the filing of new schedules providing for free time of not less than 10 days, which may be done upon 5 days' notice.

While conditions at the other north Atlantic ports are not shown to be so congested, these ports have always had the same free time on export traffic as the port of New York, which relationship should not be changed.

#### GULF PORTS.

Conditions with respect to handling export shipments at ports on the Gulf of Mexico are different from those that obtain at the north Atlantic ports. There is no congestion of export traffic at any of the Gulf ports, and, except for limited periods, there has been none for two years. There is not now and has not been any holding of export freight in cars of respondents at inland points to await transportation to the ports. The same free time applies to coastwise as to export traffic. The evidence for the most part is with respect to export shipments, and hereinafter reference will be had to that traffic, but it will be understood to include coastwise.

Export shipments move to the Gulf ports under through export bills of lading, port bills marked for export, and local bills. With respect to shipments under local bills, if the consignees at the ports decide to export the traffic after its arrival and before it leaves the possession of the carrier, they may do so, and export rates and rules

and regulations as to free time on export traffic will apply. There is no limitation of time that shipments moving under through export bills of lading may be held at the ports of New Orleans, Mobile, or Pensacola without charge. The respondents do not propose, in the schedules under suspension, to change that practice. It is asserted by respondents that there is little holding of through billed freight in cars at the ports; that the shipments are billed to certain ship agents and the cars move directly to the proper wharves and are promptly unloaded.

Export rates at all Gulf ports apply to ship side and respondents make delivery there. The free time allowed at the ports on traffic billed locally, but afterwards exported, it is asserted by respondents, is to enable exporters to give disposition of shipments. Delivery to ship side after disposition order is given is made by or at the expense of respondents. Any charges that accrue after the order is given are assessed against the carrier enjoying the road haul.

During normal conditions of transportation on land and sea much the larger volume of export shipments is made under through bills of lading. During the abnormal conditions that have existed for the past two years a larger volume has moved under bills to the ports. The change in manner of billing has been brought about by shortage of cars, irregular and uncertain sailings of vessels, and the inability of exporters to secure and hold space therein.

Previous to the year 1907 the free time allowed on shipments billed to Mobile and New Orleans and afterwards exported was 20 days. In that year it was reduced to 10 days, and it is now proposed to reduce it to 5 days.

Under rules of respondents shipments on through export bills of lading can not be made from interior points unless and until the exporter obtains a permit from the carrier which specifies the time that the shipment must be made before the vessel sails. It appears that some of the respondents issue such permits in case shipments are made to the port and marked for export, and some do not. Of course, on local shipments to the port which are afterwards exported no permit is required. The respondents show that the permit system has been in effect since 1914 and assert that it is a precautionary measure which has been effective to prevent congestion at the ports.

Conditions with respect to the handling of export shipments are not the same at each of the Gulf ports. Transfer from wharves and docks to vessels is substantially the same. There is very little loading in vessels from lighters at any of the Gulf ports. It is not necessary to show in detail here the facilities of each port and the manner in which the traffic is handled. It is sufficient to describe them in a general way.

At New Orleans practically the entire wharf system is controlled by the state of Louisiana. The governor appoints a board of commissioners of the port of New Orleans, hereinafter called the "dock board," which has direct control of the wharves and docks of the city. There are over 12 miles of docks and wharves on the river front of the city. They occupy a narrow strip of land along the bank of the Mississippi River. There is no additional space in front of the city upon which to erect wharves or warehouses. The wharves are connected by paved driveways, and many of them are covered by sheds to protect merchandise from the elements. In addition to the public docks there are railroad-owned docks and wharves at Westwego and Chalmette, some distance from New Orleans; Stuyvesant docks, near one end of the public wharves; and at Algiers and Gretna, La., all of which are included in the port of New Orleans. New Orleans is situated about 110 miles from where the Mississippi River empties into the Gulf of Mexico, and it requires about 12 hours for a boat to make the trip from the mouth of the river to the wharves.

A large part of the export traffic through New Orleans passes over the public docks. The revenue received from rent of ship space, storage, etc., is expended by the dock board in maintenance and for improvements and betterments. Wharves that extend over the water can not be loaded to exceed 250 pounds per square foot, and those built on the battures not to exceed 500 pounds.

The public docks at New Orleans are not reached by the rails of respondents. They are served by the Public Belt Railroad. After shipments have been placed by the Public Belt 48 hours' free time is allowed for unloading. Before the Public Belt will receive cars loaded with export freight from respondents the exporter must show a ship agent's permit to unload the shipment on the wharf assigned to the vessel.

At Mobile each railroad has its own docks and wharves which are used as freight depots. There are also docks owned by the city and by private interests. The aggregate storage capacity is ample for all business offered. Export and coastwise freight must be delivered direct to the vessels, stored on wharves or in ship-side warehouses under the custody of the carrier, and under proper guaranty of coastwise or export movement if they are to be allowed 10 days' free time at the port. Comparatively much more freight is stored on wharves and docks at Mobile than at New Orleans. The port rules at Mobile permit of the storage. If traffic moves to Mobile under local bills the exporter must give notice within 48 hours after its arrival of his intention to export it, or the usual free time of 48 hours will be applied.

At Pensacola the wharves and docks are owned and operated by the Louisville & Nashville Railroad Company. Lumber, timber, and

other forest products and naval stores are the principal articles exported. Three and four days' free time is now allowed on this traffic. The rule is that if a consignee receives three carloads or less on any one day the free time thereon will be 72 hours, and 96 hours on each car over three received during any one day. Previous to the time the three and four day rule was established the free time allowed was 10 days. Some years ago a few lumber brokers in Pensacola were found to be taking advantage of the 10-day rule to hold cars for unreasonable periods. The superintendent of the Louisville & Nashville at Pensacola called a meeting of representatives of shippers, and after consultation it was agreed that all concerned would be benefited if the free time was reduced. Accordingly an exception as to the free time on lumber, forest products, and naval stores was incorporated in Louisville & Nashville and Gulf, Florida & Alabama demurrage and storage schedules. At the hearing a representative of the port of Pensacola asked that the free time on lumber and naval stores be made the same as at the other ports, because the shorter time was unjustly discriminatory against that port. There is not sufficient evidence in this record to permit of a determination of that question. In view of the finding herein, Pensacola will be in a more favorable situation in this regard than it has been for some years without complaint from its exporters, so far as the records of the Commission disclose.

At Gulfport, Miss., there are practically no exports except lumber. The loading on ships is from cars or barges, and frequently the loading is upon schooners and other sailing vessels. The free time now allowed is 5 days on lumber originating at all points except Hattiesburg, Lumberton, and Laurel, Miss., which have 10 days. Most of the lumber shipped via Gulfport reaches that port from comparatively short distance points, although some shipments are made from farther distances on lines of the Louisville & Nashville and Illinois Central. Gulfport interests testified that 5 days' free time on lumber for export was sufficient under the conditions that exist at that port. There is no showing as to the time lumber is held in cars at this port. There is at this time very little export business being done at Gulfport. The question of the propriety of the 10 days' free time now in effect on shipments from the points above named is involved in another proceeding. *Newman Lumber Co. v. G. & S. I. R. R. Co.*, Docket No. 9204.

At Galveston practically all export traffic is handled by the Galveston Wharf Company, which owns and operates a railroad connecting the terminals of respondents with about 6 miles of docks and wharves on the bay front of the city owned by the wharf company. That company allots to each steamship company such space as may be agreed upon for handling all the latter's traffic at the



port. For example, the Leyland line has been assigned to what is known as "pier 10," and all traffic from each of the railroads going to that line is delivered to the wharf company and switched by it to pier 10. Very little export traffic is handled over the docks of the Southern Pacific Company at Galveston. Demurrage is computed under a four-day average agreement plan. The published rule is that four days of 24 hours each free time will be allowed on each car. It is also provided that "free time will commence at 7 a. m. on the second day following the day on which railroad notice of arrival is sent by U. S. mail or delivered by messenger." In substance the rule grants five days' free time on each car. It is explained in the rules that 24 hours' additional from the first 7 a. m. is allowed for the purpose of providing for delays in switching, placing, or unloading cars. At Galveston in case export shipments are billed through the ship agent pays any demurrage charges that may accrue; and on traffic billed locally for export, or subsequently exported after being shipped to the port locally, the consignee at the port pays the charges. The consignee of traffic billed locally must notify the carrier within 48 hours after arrival of the shipment that he desires to export it. If such notice is not given, the shipment is treated as local, and rates and demurrage charges are assessed accordingly. There does not seem to be a similar rule in effect at New Orleans. That is to say, under the practice at the latter port an exporter may bill his shipment to the port and there hold it until the eighth or ninth day; and then if he decides to export it he is allowed to do so, and the carrier assesses the export rate and gives him the benefit of the free time applicable to export traffic. Rules with respect to free time on export traffic are the same at Port Arthur, Bolivar, and Texas City, Tex., as at Galveston.

It is proposed in the suspended schedules to reduce to 5 days the free time of 10 days now allowed on coal for ships' bunkers, hereinafter called "bunker coal," at New Orleans, Mobile, and Pensacola. Bunker coal is not properly to be considered export traffic, and the proposed reduction with respect to it will hereinafter receive separate consideration.

The respondents assert that the proposed reduction in time is for the purpose of securing more prompt release of cars. Their witnesses state that the reduction in free time from 20 to 10 days in 1907 had the effect of releasing the equipment sooner than theretofore. They express the opinion that a further reduction at this time will result in no undue hardship to exporters via the Gulf ports, and that at the same time it will result in a very considerable saving of cars. An assistant freight traffic manager of the Southern Pacific lines at New Orleans testified that the recent increases in demurrage

charges had resulted in more prompt release of cars throughout the state of Louisiana. He was of opinion that this demonstrates that whether free time is reduced or demurrage charges are increased consignees will devise some means of unloading equipment more promptly. The foreign freight agent of the Southern Railway at New Orleans testified that he believed that exporters can accommodate themselves to the proposed 5 days' free time the same as they accommodated themselves to the reduction from 20 to 10 days 10 years ago; that exporters stated when the reduction to 10 days was proposed that it would be impossible to do business through New Orleans on that basis; and that they are now doing an increased business under the reduced time. He expressed the opinion that any detention of cars to exceed 5 days at New Orleans is due to the fact that the exporter has not booked ship space, and is, therefore, not able to order his freight to ship side; and that if he has his contract with the steamship company it is merely a matter of ordering the car through the carrier when it arrives, and the carrier getting a permit from the steamship line and making delivery; and that if an exporter has not engaged ship space he is using railroad cars as warehouses.

During the months of October, November, and December, 1913, and January, February, and March, 1914, there were about 16,000 carloads of export traffic received at the ports of New Orleans and Mobile and for a similar period in 1916-17 about 17,000. Of the total number of cars received in the above periods, 7,924 were released before the free time began to run. There appears to have been an improvement in the matter of release of cars during the latter period. There was a decrease of export shipments of lumber and forest products in 1916-17, but there was an increase of shipments of miscellaneous freight. The detention of cars is less at Mobile than at New Orleans. At the latter point, as near as can be ascertained from exhibits on file, the average detention at the time of hearing on all export traffic is a little over three days, except that detention of cars on shipments moving under through bills of lading is not shown. An exhibit on file shows that the Southern Railway transported 327 cars of export freight to New Orleans during the month of January, 1917; that the shipments all passed over the public wharves; that 271 of the cars were released within five days; and that only 56 were held over five days.

It is contended by respondents that the best evidence of exporters' ability to release all cars within the proposed free time of five days is the very large percentage of cars that are now released within that time.

The respondents assert that wharfage space allotted to vessels is ample to accommodate any freight that may be loaded at New Or-



leans; and that detention of cars at that port or Mobile is due to the fact that shipments are consigned locally before vessel space has been secured; and that shipments are held in cars until free time on the wharves begins. It was stated by representatives of respondents that consignees in New Orleans were using cars for warehouse purposes; that they made sales while the freight was in the car; and that freight was held in cars to await the making of vessel contracts for space. With respect to these statements no instance where any of the things stated had been done was given, nor was evidence submitted as to the character and kind of freight that was so held at the port. It is further asserted by respondents that inasmuch as the dock board at New Orleans allows 15 days' free time on the wharves previous to the arrival of a vessel in which to accumulate its cargo, any delay in giving disposition orders at that port is due to the neglect of the exporter.

Protestants show that at the present time about 40 per cent of the export business at New Orleans and Mobile is handled under through export bills; that the same service is rendered at the port no matter how the traffic is billed; and that respondents do not recognize that there is any hardship in caring for the through billed shipments in their cars, warehouses, or on their wharves without charge for demurrage or storage. It is insisted by these protestants that the proposed reduction in free time will not result in more prompt release of cars; and that it will serve no purpose except to impose undue and unreasonable charges on the traffic of the port and widen the existing discrimination between the shipper located in the interior who handles his export business under through bills and the exporter at the port who bills his foreign shipments to point of transshipment.

It is also asserted by protestants that there is not now and never has been wharf space on the public docks in New Orleans on which cars containing export shipments can be unloaded within five days. It was testified to by an exporter of staves and other forest products that it is not possible, in many cases, to secure from a steamship agent the necessary authorization to enable a carrier to move cars to the wharves before the expiration of the present 10-day rule. An order may be asked for by the exporter and the steamship agent will not issue it, because the wharf space is fully occupied by other traffic.

It is stated by a representative of the dock board that it is physically impossible to use the public docks for storage, because they occupy such a narrow strip of land; that the sheds which are erected on the docks are for the protection of merchandise in transit only; and that the granting of free time for the accumulation of part

cargoes is to facilitate the loading of the vessel after it reaches the dock. It is shown by the protestants that the greater part of the tonnage of export freight handled at New Orleans passes over the public docks with such limited space that the traffic must be kept moving in order to prevent congestion.

The Galveston Commercial Association, a protestant against the proposed reduction of 10 to 5 days on cottonseed cake and meal, which is the only change proposed at Galveston, contends that while it is interested in having established and maintained the same free time at all the ports in the country, it is particularly concerned that the free time at the Gulf ports shall be the same. As before stated, under rules in effect at Galveston steamship agents assume demurrage that may accrue on traffic moving under through export bills of lading, and an average agreement plan is operated, except on grain, bunker coal, and cottonseed products. The average agreement is nominally four days, but, as previously explained, is actually five days. When the agreement was entered into by steamship agents and carriers with respect to through-billed shipments, the carriers also established a like arrangement for local-billed export shipments. It is shown that the average detention of cars of cottonseed products for the period of one year previous to the agreement was 4.2 days, and after the agreement went into effect the average detention was 2.8 days. In an exhibit filed by a representative of the Galveston Bay lines it is shown that during the period of six months ended March 31, 1917, 5,487 carloads of cottonseed cake and meal were handled at Galveston. Of that number 1,763 cars were released in the first 5-day period, 3,416 in the second 5-day period, and 308 cars were held to exceed 10 days. The average detention was 7.35 days. It is further shown that from September 1, 1914, to August 31, 1915, the average detention of cars loaded with cottonseed cake and meal was 7.2 days, and that from September 1, 1915, to August 31, 1916, 8.3 days. The witness submitting the exhibits expressed the opinion that if a 5-day rule was made applicable to this traffic, there would be a material reduction in the daily average car detention.

A witness for the Galveston protestants testified that, in his opinion, good results would follow from a reduction of free time on cottonseed cake and meal; but, because it is necessary to grind the cake at the port and sack the cake and meal to prepare it for exportation, the time should be made not less than six days, under an average agreement. This witness was also of opinion that the reduction in free time proposed by the carriers at New Orleans would be a good thing for commerce generally.

Galveston interests also insist that the average agreement plan now in effect at that port should be made applicable at all Gulf ports. It is asserted that conditions at each of the ports are so nearly alike; that each competes with the other for export business; and that a shorter free time at one port than another is unjustly discriminatory.

While it might be advisable from purely commercial considerations for respondents to establish and maintain the same free time and storage rules and charges at all the ports of the country from Galveston to Boston, conditions at the various ports must govern. It is clear that what is reasonable under the conditions at one port might be unreasonable at another, where entirely different conditions exist. Free time allowances on export freight at the ports are to be justified, if at all, because it requires some time to arrange for the transfer of freight from rail to ocean carriers. Requirements in this respect at New York are entirely different from those at the Gulf ports. Exporters at the north Atlantic ports have for many years had longer free time than has been granted at the Gulf ports with respect to shipments moving to the port and subsequently exported. On this record it can not be found that the difference in time is unjustly discriminatory against the Gulf ports or exporters who do business at or send their traffic through those ports.

As to the contention of the Galveston Commercial Association with respect to the average agreement, it is to be remembered that the agreement at Galveston was entered into, so far as through billed traffic is concerned, by the assumption by ship agents of any demurrage charges that might accrue. Whether ship agents at the other Gulf ports can be induced to enter into such an arrangement does not appear. On this record there is nothing from which to find that an average agreement such as is in effect at Galveston would be reasonable and should be required at New Orleans, Mobile, or Pensacola.

The greatest detention of cars at the Gulf ports appears to be at New Orleans, and if there is any abuse of the present free time rule there it probably exists because of the want of a single and simple rule with respect to shipments billed to the port and afterwards exported. As before explained, at New Orleans a shipment may be made to a consignee, and if at any time before expiration of the free time he desires to export it he may do so and the export rates and free time are applied. At the other ports the consignee must notify the carrier within 48 hours after arrival of the shipment that he desires to export it. At the Atlantic ports if the shipment is billed locally, not marked for export, it is treated as a local shipment even though after its arrival it is exported. The respondents

which serve New Orleans should provide a rule that within 48 hours after the arrival of a shipment at the port the shipper must notify the carrier of his desire to export it or local rates and demurrage rules will be applied.

Upon consideration of the facts and circumstances of record respecting the movement of export traffic through the Gulf ports, and of the exigencies of the existing car supply situation hereinbefore outlined, we are of the opinion, and find, that the respondents have justified a reduction of the free time accorded at such ports to seven days. In arriving at this period we have in view the preservation of a substantial parity between the ports of Galveston and New Orleans. As this record shows, the operation of the average agreement in effect at Galveston, where no change is proposed, permits of from seven to eight days' free time, and we have in many cases recognized the competitive conditions as between these ports.

#### BUNKER COAL.

The proposed reduction of the 10 days' free time now allowed on shipments of export and bunker coal to 5 days is to be applicable at the ports of New Orleans, Mobile, and Pensacola. There is very little export coal business done at these ports. The chief interest of coal dealers is in the fuel-coal supply for ships. The method of handling coal at Pensacola is different from that at New Orleans and Mobile. At Pensacola coal is dumped by the Louisville & Nashville direct from cars into ships' bunkers. The coal-dumping facilities are owned by that carrier and its rates include unloading into ships' bunkers. At New Orleans and Mobile coal is unloaded at the expense of the carriers from cars into barges owned by coal dealers. The barges are towed by and at the expense of coal dealers to ship side, and the coal is loaded into bunkers by means of floating elevators, also owned and operated by dealers.

There are three concerns which do most of the bunker-coal business at New Orleans, namely, W. G. Coyle & Company, Incorporated, the River Coal Company, and the New Orleans Coal Company. These three companies do about 95 per cent of the business. Practically all the coal handled by Coyle & Company is delivered by the Illinois Central through its tipple at Harahan about 12 miles north of the foot of Canal street in New Orleans. This company receives some coal from other carriers delivered over the Chalmette tipple. This company has its central yard located on the river, opposite Canal street. The River Coal Company receives practically all its coal at the Chalmette tipple of the Southern Railway, about 9 miles south of the foot of Canal street. This company also has its

assembling yard opposite Canal street. The New Orleans Coal Company owns its own tipple, which is located at the foot of Walnut street in the city, where its assembling yard is also located. Most of the coal handled by this company moves to New Orleans via the Louisville & Nashville.

The quantity of bunker coal handled at New Orleans fluctuates according to shipping conditions. Previous to December, 1916, the largest volume of bunker coal was handled by the Monongahela Consolidated Coal & Coke Company, which in that month sold its business to the River Coal Company. The former company received its coal exclusively by barges which were floated down the Ohio and Mississippi rivers from the Pittsburgh-Ohio coal district. No coal is now received in New Orleans from the Pittsburgh district, and contracts for coal have been transferred from that district to the coal districts in the state of Alabama. From 600,000 to 700,000 tons of bunker coal are handled annually in New Orleans. Since the middle of December, 1916, about five-sixths of the bunker-coal tonnage has moved to New Orleans by rail; the other one-sixth has been floated in barges down the Alabama and Warrior rivers and across the Mississippi Sound. Coyle & Company handle from 150,000 to 200,000 tons of bunker coal annually.

The New Orleans coal dealers own no storage facilities on land, and they assert that storage of coal in any considerable quantities under conditions that exist at New Orleans can not be done without such large expenditures for land, and for loading and unloading, and loss of coal in repeated handling as to make the business unprofitable. Coal is now stored in barges or held in cars of respondents to await loading. The aggregate capacity, in tons, of the barges owned by each of the New Orleans coal dealers is as follows:

	Tons.
River Coal Company-----	6, 500
New Orleans Coal Company-----	6, 500
Coyle & Company-----	3, 500

The method of handling coal at the Harahan tipple is substantially as follows: The arrival of loaded cars is reported to the dealer at once by telephone, which is later confirmed by formal notice. When delivery is desired, the numbers of the cars to be placed on tipple tracks are telephoned to the carrier, and the telephone notification is promptly confirmed in writing. Cars to go to the tipple are usually switched out and delivered on tipple tracks within 24 hours after the order is given. The coal is dumped by the carrier into the tipple hopper and delivered by means of a belt conveyer into barges at the rate of about 200 tons per hour from self-dumping or hopper cars. If the coal is in stiff-bottom cars, about 100 tons per



hour can be dumped. After orders to place cars at the tipple have been given the carrier the coal company is advised of the time within which cars will be ready for dumping, and barges are required to be placed under the tipple conveyer to receive the coal. As soon as a barge is loaded it is moved, and when there is more coal on hand than will fill one barge another is towed into place. After all the barges are filled, or the coal is unloaded, they are towed to the assembling yard of the dealer.

The method of handling coal at the Chalmette and New Orleans Coal Company tipples is practically the same, except that the unloading is less rapid, because the Harahan tipple is double track and the others single track. From 100 to 125 tons per hour are unloaded from self-dumping cars, and from 40 to 50 tons from stiff-bottom cars.

Coyle & Company is owned by the De Bardeleben Coal Company. The latter company owns and operates a coal mine at Sipsey, Ala., and practically all the bunker coal handled by Coyle & Company in New Orleans is shipped from that mine either by all-rail routes or by rail-and-water routes. Sipsey is located about 40 miles northwest of Birmingham, Ala., on the St. Louis-San Francisco Railway. Substantially all the coal is routed via the Illinois Central, probably because it is more convenient to use the latter's unloading facilities in New Orleans. The routing necessitates a haul over the St. Louis-San Francisco from Sipsey to Amory, Miss., thence on a branch line to Aberdeen, Miss., at which point shipments are turned over to the Illinois Central, which hauls them over its Aberdeen branch to Canton, Miss., and thence to New Orleans. The distance from Sipsey to New Orleans by the route of movement is about 450 miles. The short-line distance from Sipsey to New Orleans is about 390 miles via the Southern. Coyle & Company receives a large proportion of its coal by water. The movement by water necessitates a rail haul of about 17 miles over the St. Louis-San Francisco to a point on the Alabama River. The record does not show the distance of the haul of the coal handled by the River Coal Company and the New Orleans Coal Company, but the movement is generally over the lines of one carrier. The River Coal Company receives coal from a mine owned by the same interests which own it, and it also has private coal cars in which shipments are made.

The following exhibit, filed by a representative of Coyle & Company, shows the movement of coal by rail into New Orleans for the months named in the years 1915, 1916, and 1917. The "average time en route" shown in the table is the time from and including the date of the bill of lading to and including the date of arrival in New Orleans; the "average disposition time" is the time from date of

47 I. C. C.

arrival in New Orleans until disposition order is given; and "average time at New Orleans" is the time from and including date of arrival at New Orleans to and including the date of unloading:

	Number of cars.	Average time en route.	Average disposition time.	Average time at New Orleans.
<b>1915.</b>				
February.....	212	8	3	4.8
March.....	223	8.2	5.7	7.9
June.....	287	8	8.5	10.9
July.....	66	8.8	6.5	9
<b>1916.</b>				
September.....	35	7.1	3	4.4
October.....	57	6.7	1.2	2.4
November.....	145	8.7	1.3	2.9
December.....	65	7.6	4.9	9
<b>1917.</b>				
January.....	175	8.5	1.3	4.1
February.....	127	8	6.6	11.2
March.....	47	8.4	4.7	8.8
<b>Total.....</b>	<b>1,439</b>	<b>8</b>	<b>4.2</b>	<b>7</b>

<sup>1</sup> Average.

An exhibit was filed by a representative of the River Coal Company, which shows receipts of coal, in carloads, by it from December 10, 1915, to March 31, 1917, the average time en route, and the average detention time at New Orleans, as follows:

	Number of cars.	Average time en route.	Average time at New Orleans.
December, 1916.....	92	6.1	2.65
January, 1917.....	322	5.45	1.57
February, 1917.....	310	6.35	2.20
March, 1917.....	323	5.62	2.19
<b>Total.....</b>	<b>1,047</b>	<b>5.82</b>	<b>2.07</b>

<sup>1</sup> Average.

A large part of the coal transported to New Orleans by the Louisville & Nashville is delivered to the New Orleans Coal Company. An exhibit was filed by that carrier giving receipts of coal for the months of October, November, and December, 1916, and January, February, and March, 1917, and showing that a total of 1,413 cars were received. Of this number 902 were released before the free time began to run and a total of 1,271 within five days.

The River Coal Company and the New Orleans Coal Company have each given carriers standing orders that on arrival at New Orleans all cars of coal shall be delivered to tipple tracks. Coyle & Company have given no such order, and cars are held at the terminals to await disposition. It is contended by respondents that if



Coyle & Company were to give a standing order to send cars to the Harahan tipple, or to the Chalmette tipple on arrival in New Orleans, there would be a material saving of cars. The respondents show that Coyle & Company do substantially one-third of the bunker-coal business that is done at New Orleans and have about one-fifth of the total available barges; that the Harahan tipple is about 12 miles from the assembling yard of Coyle & Company; and that cars are accumulated in the terminal yards until a sufficient number are on hand to warrant sending a tugboat with barges to the tipple.

The situation at Mobile is not substantially different from that at New Orleans. There is a difference in the instruments used for handling the coal; but the methods are nearly the same, and there seems to be no reason why there should be a different free-time rule applicable at New Orleans than at Mobile.

Most of the ships supplied with bunker coal at Pensacola are those which obtain their cargoes at Texas ports. Some vessels that load at New Orleans and Mobile also secure their bunker coal at Pensacola. An exhibit was filed by a coal company at Pensacola showing receipts of coal by it during the year 1916 and the months of January, February, and March, 1917. It is not necessary to set the exhibit out in full. It is sufficient to summarize it as follows:

Number of cars received.....	1, 516
Total days detention.....	5, 297
Average days detention per car.....	3. 42
Number of cars held over 5 days.....	375
Number of cars held over 10 days.....	85

An exhibit filed by another company shows the receipts by it for the year 1916, and a summary of the exhibit is as follows:

Number of cars received.....	568
Total days detention.....	1, 636
Average days detention per car.....	2. 88
Number of cars held over 5 days.....	100
Number of cars held over 10 days.....	37

A summary of an exhibit filed by the Louisville & Nashville, showing the receipts by all dealers in Pensacola for the months of October, November, and December, 1916, and January, February, and March, 1917, is as follows:

Number of cars received.....	1, 037
Total days detention.....	4, 853
Average days detention per car.....	4. 68
Number of cars held over 5 days.....	301
Numbers of cars held over 10 days.....	81

As before stated, cars are dumped by the Louisville & Nashville into the bunkers of vessels at Pensacola. The respondents assert that five days is ample time in which to arrange for loading coal into ships' bunkers at Pensacola and that any detention over five days is due to nonarrival of ships, or their failure to take the amount of coal they order, or to the fact that coal dealers at the port are unable to supply the amount of coal required in time for ships' sailing.

Protestants contend that under present conditions at the ports of New Orleans, Mobile, and Pensacola the proposed reduction in free time would seriously handicap the successful conduct of the business. They state that it is impossible to handle the present volume of bunker coal at New Orleans in the storage equipment available if the free time is reduced, and that because of naval contracts and uncertain movements and requirements of vessels it is important to have on hand a maximum supply of coal. A representative of Coyle & Company testified that the floating coal facilities of that company at New Orleans aggregate about 3,500 tons; that the company endeavors to keep about 3,000 tons of coal afloat, 3,000 to 4,000 tons on railroad tracks and in coal barges, and 3,000 to 4,000 tons en route.

It is contended that a condition which must be considered is an order of the federal government which does not permit operation of wireless apparatus on vessels, which results in the inability of coal dealers to receive dependable intelligence of the arrival of vessels previous to their entry into the passes at the mouth of the Mississippi River. The vessel's coal requirements can not be ascertained until it reaches docks in the city. Protestants have contracts with the government for supplying ships of the navy. The demands of the ships are not known until the port is reached and a supply of coal is ordered. Sometimes a part only of the order is taken, leaving the dealer to carry the surplus until next arrival of a ship. It is stated by protestants that the uncertainty of the quantity of coal which ships are going to take, the irregularity of sailings and arrivals, necessitates the use of the present free time on bunker coal. It is further contended that the irregularity of receipts incident to rail transportation added to the difficulties respecting movements of vessels makes necessary the continuance of the existing free time. They also further contend that if free time is reduced to five days facilities for handling coal at the port of New Orleans would have to be increased; that at this time barges could not be built; and that storage of coal on land is impracticable.

The protestants show that practically all of the bunker coal furnished at the Gulf ports is made on contracts in which the price is fixed; that there is no opportunity for the dealer to speculate; and that he would gain nothing, so far as price is concerned, by holding

the coal at the port longer than is absolutely necessary. A witness for protestants stated that shipments of 1,500 or 1,000 tons of coal started to New Orleans from the Kentucky or Alabama fields not in one case in a thousand will the complete lot arrive at the port; that the completed shipment will seldom arrive within five days, due to a number of causes, such as bad order of cars, splitting up of trains at various junctions, etc. It is contended by the New Orleans protestants that they have not utilized the free time now allowed as a convenience of their business, but only so far as is necessary to meet the demands and to fit the peculiar conditions at the port beyond their control; that cars are unloaded as rapidly as possible; and that coal dealers cooperate with the carriers to secure return of empty cars to the mines at all times. It is shown that, on the whole, coal dealers at New Orleans do not, on the average, hold cars for anything like the 10 days' free time now allowed. It is further shown by protestants that respondents do not propose to reduce the free time allowed on shipments of coal for bunkers and export at Charleston, S. C., Sewell's Point, and Lambert's Point, and Norfolk, Va., where the free time is now more than 10 days; and that this is an unjust discrimination against the Gulf ports. It is shown that under present conditions, with respect to value of ship's space, they often take only coal sufficient at Pensacola or other Gulf ports to last them to Charleston or Norfolk and there fill their bunkers, and that increased demurrage or other charges that might result from the proposed decrease in free time would seriously interfere with the power of the Gulf ports to compete.

It is argued by protestants that they have shown that a 10-day free time period on coal at New Orleans and Mobile is not unreasonable under the conditions which exist at those ports and that a reduction in the time to 5 days will unduly burden the traffic without benefiting the carrier by way of more prompt release of cars.

The respondents show that a majority of shipments of coal are handled to Pensacola from the mine in from two to three days; that none of them require more than four days; and that in some instances the shipments are made in one day; and that any delay at that port is due to the failure of vessels to arrive on time or to accept the coal in the quantity ordered.

The Pensacola protestants agree that holding coal in cars at that port is largely due to ships' defaults. Under present conditions Pensacola dealers buy coal on the basis of a number of cars per day from mines of limited capacity. A witness for one company testified that his company had on hand from 8 to 12 cars of coal per day in order to be prepared to meet demands of vessels.

There is very little bunker coal business done at Galveston, because of the high price of coal. The coal supply of Galveston was formerly received by boat, and the facilities there are largely built to accommodate inbound shipments. No coal is received by boat at Galveston at this time, and dealers there now secure coal from the Oklahoma fields, which involves a rail haul of over 500 miles. Coal dealers in Galveston expect a large demand for bunker coal in the near future and ask that the free time in Galveston be increased to five days by finding and order of the Commission. The respondents in the schedules under suspension do not propose to change the free time on coal now allowed at Galveston. In this proceeding the free time on coal at that port is not directly in issue, and there is nothing in this record upon which a reasonable time may be determined.

It is well settled that it is the primary duty of a carrier to afford carriage or transportation. As a part of such transportation it is its duty to afford the consignee, after the actual movement has ceased, a reasonable time to remove the lading from the car. It is no part of the carrier's duty to furnish the consignee cars to be used for warehouse or storage purposes. If conditions at New Orleans, Mobile, and Pensacola not connected with the transportation are such that coal dealers do unduly hold shipments in cars after notice of arrival has been sent, the respondents are justified in making such rules as will promote a more prompt release of their equipment. Are transportation conditions at these ports such that the coal shipper is justly entitled to 10 days' free time? This record shows that two coal companies in New Orleans, which do two-thirds of the business of the port, have no difficulty in releasing within five days cars loaded with coal shipped to them, except in cases where vessels fail to arrive on time or fail to take the amount of coal they order. The neglect or default of the vessels in this respect is beyond the power of respondents to control. It is further shown that cars consigned to another coal company in New Orleans are held on the average of about seven days before being unloaded. It may be conceded that it is difficult, if not impracticable, to store coal on land in New Orleans, or at this time to acquire more barges for storage purposes, but these are matters for which the respondents are not responsible. It is said by protestants that at other ports respondents have more costly facilities for unloading coal and that failure to supply such facilities at New Orleans is responsible for detention of cars. The evidence does not show that the unloading facilities in New Orleans or Mobile are inadequate.

It further appears that Coyle & Company has coal shipped to it over a route composed of lines of two carriers about 450 miles long, which involves four switch movements previous to the arrival

of the shipments at the port of New Orleans. The evidence is that the average time consumed to transport coal from the mine to New Orleans is about eight days and that the transportation has required about that average time for several years. Uncertainty as to the time of transportation of coal from the mine of this shipper does not appeal to be responsible for detention of cars. It requires a certain number of cars to be at the terminal before it orders them to the tipple for unloading, in order that it may economically conduct towage of barges to and from its assembling yard. Irregularity of transportation service the rail carrier is responsible for, and any rule as to free time which does not take that into account is unreasonable. There is not sufficient evidence in this record to warrant a finding that the rail carriers render such irregular and unsatisfactory coal transportation service to any of the Gulf ports that five days' free time is not ample to offset.

The whole country is suffering from a severe and unprecedented car shortage. This condition is not peculiar to any locality or to any particular kind of traffic. The need for coal cars is just as urgent as for any other freight-carrying cars throughout the country. Any unnecessary detention of coal cars at the ports must be avoided. If the detention is due to want of facilities of the shipper, or other matters for which respondents are not responsible, proper steps to prevent the detention are justified.

At Charleston, S. C., the free time allowed on bunker coal is 15 days; at Newport News, Va., the Chesapeake & Ohio schedules provide that there will be no demurrage on cars of coal consigned to that port for transshipment by vessels; at Sewall's Point the Virginian Railway has a similar provision in its schedules; and at Lambert's Point and Norfolk schedules of the Norfolk & Western provide 12 days' free time on coal consigned to those ports for delivery to vessels. It is not proposed by the respondents to change the free-time rules in effect at the above ports. Protestants contend that the maintenance of a shorter free time on coal at the Gulf ports is unduly prejudicial to them. There has been for many years less free time on coal at the Gulf ports than at the ports above named. The evidence in this record does not disclose the conditions at Charleston and the Virginia ports. There are very large shipments of coal for export through the ports named, and it is altogether probable that may account for the free-time rules there in effect. In the absence of a showing as to similarity of circumstances and conditions on this record at the Gulf and Atlantic ports no finding of undue prejudice because of shorter time at the Gulf ports may properly be made.

Shipments of bunker coal are made under different circumstances than export shipments. The movement of coal is generally from one



point of origin to the port where delivery is made. The shipper is not hampered by embargoes such as are now in effect with respect to export shipments. The prevailing car shortage interferes alike with the ability of coal shippers and shippers of export freight to conduct their business in a satisfactory manner. In the coal business this record shows that five days is sufficient time to provide for unloading bunker coal at the Gulf ports under the conditions that now exist, except for irregular movements and demands of vessels and inadequate storage facilities.

Under all the facts and circumstances appearing of record we are of opinion and find that the respondents have justified the proposed reduction in free time on shipments of coal to the ports of New Orleans, Mobile, and Pensacola, and to that extent the suspension heretofore ordered should be vacated. An appropriate order will be entered.

**HARLAN, Commissioner**, dissenting:

A systematic and dependable transportation service is more important at this time than ever before in our history. More traffic is being offered than our carriers are able to move and with the coming of winter the situation is likely to grow worse. Nevertheless in some way the munitions and supplies required by our armies and the armies of our allies must be carried to the seaboard. Food must be distributed and other domestic needs must be met. Coal must be moved from the mines to the factories, and the industries of the country generally must not be allowed to languish for want of necessary transportation if such consequences may be avoided. But the carriers can respond to the extraordinary volume of service now demanded of them only with the facilities and equipment now in use, for, as we have been advised, few new cars and locomotives can be put on the rails for months to come. Under such conditions the Commission, in my judgment, should not only welcome any reasonable program for improvement offered by the carriers, but should itself take the initiative in requiring them to revise any rule or practice that unduly hinders or obstructs the prompt release of equipment. The carriers are already some thousands of cars short of the country's requirements and every car held under load for storage purposes means that the traffic of another shipper, however important it may be, can not be moved. It is a matter therefore of grave public concern to keep every car in active service and not allow it to remain at a terminal for storage or other purposes for a greater length of time than is absolutely necessary.

Under a rule in the carriers' tariffs providing 15 days of free time some thousands of freight cars are daily held under load at the Atlantic and Gulf ports awaiting the arrival of vessels to carry

their contents to foreign ports. Besides thus tying up these cars for use as warehouses, the record shows that the rule results also in congestion at the ports, and this, in turn, interferes with the movement to the ports of other cars containing both domestic and export freight. Under these circumstances the carriers have proposed in the tariffs under suspension to reduce the free time to five days. This course is suggested not as a means of increasing their revenues, but primarily for the purpose of inducing greater cooperation on the part of exporters and steamship lines and forcing shippers, promptly and within that period as far as possible, to restore the cars containing their export traffic to the service of the general shipping public. It is thought that the imposition of the established charge, for using the cars as warehouses beyond the proposed five-day period of free time, will have that wholesome tendency. In my judgment the proposal of the carriers is a reasonable measure to effect a reasonable end, and is in the interest both of the exporters as a class and of the general public.

By a nice weighing of the evidence it may appear that in this or that particular the carriers are somewhat at fault, while in another particular some blame may be assigned to the exporters and to the ocean lines. The record, however, makes it clear that the extreme and unprecedented condition of congestion on the carriers' piers at all the ports, and particularly at the port of New York, is due largely to the enormous increase in the volume of export freight and to a general demoralization of the ocean lines. Ship space has frequently been commandeered by foreign governments after contracts with shippers have been made; vessels have been held in port because of the dangers from submarine attack; and ships in which space has already been offered to exporters have frequently been diverted under order by foreign governments to other ports. Traffic men and others familiar with transportation will readily understand the consequences of such uncertainties. But these conditions grow chiefly out of the war, and what the carriers propose is simply to put the exporters under the burden of a reasonable charge, for using cars as warehouses, as an inducement tending to secure from them and the ocean lines a fuller and better cooperation in meeting these unusual conditions. It is the export traffic that is directly affected and the difficulties inherent under present circumstances in the handling of that traffic ought not to be permitted to burden the traffic of others.

For these reasons I am compelled to withhold my assent to the conclusions announced by the majority.

COMMISSIONERS AITCHISON and ANDERSON took no part in the disposition of this case.

47 I. C. C.



No. 8325.  
C. S. EMERY & COMPANY  
v.  
BOSTON & MAINE RAILROAD.

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*Submitted October 14, 1916. Decided November 12, 1917.*

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Defendant's practice of "expensing forward" customs duties and brokerage fees on shipments imported from Canada through Newport, Vt., when its agent at Newport acts as the customs broker, and refusing to "expense forward" customs duties and brokerage fees on shipments handled by other customs brokers found unduly preferential to shippers who employ the railroad agent as their customs broker. Reparation denied.

*Walter A. Dane* for complainants.

*W. A. Cole* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Curtis S. Emery and Donald Emery, copartners, doing a customs house brokerage business at Newport, Vt., under the firm name of C. S. Emery & Company. By complaint, filed September 2, 1915, they allege that the refusal of defendant to allow the customs duties paid through them, together with their brokerage fees, to be "expensed forward" on the waybills to ultimate consignee subjects complainants to unjust discrimination. Reparation is asked and an order requiring the removal of the alleged unjust discrimination.

In a preliminary report on the question of jurisdiction, 38 I. C. C., 636, we found that the questions involved in the controversy were within our jurisdiction, and the case was assigned for hearing on its merits.

Defendant transports property from various points in Canada to various points in Vermont and other states of the United States. This property is entered at Newport, Vt., which is a port of entry of the United States. In addition to the consignee at destination, the waybills show certain customs brokers at Newport as "intermediate" consignees. When the property arrives at Newport the railroad agent notifies the customs broker named as "intermediate" consignee, who takes the steps necessary to have the property entered in the United States, including the payment of duties. He then presents the customs receipt to the railroad and directs that the prop-

erty be shipped forward to the ultimate consignee. Defendant's agent at Newport is also a customs broker. If the shipper names him as broker, defendant permits the customs duties and broker's fees to be "expensed forward" to the ultimate consignee. If the shipper, however, names some other broker as his agent, defendant refuses to expense forward these charges. This privilege of expensing forward is not published in the tariffs. The railroad agents in Canada are notified by circular to advise shippers that they should designate defendant's agent at Newport as their customs agent in order to avoid delay and demurrage.

Section 3 of the act to regulate commerce makes it unlawful to give "any undue or unreasonable preference or advantage to any particular person, company, firm, corporation \* \* \* in any respect whatsoever \* \* \*." The Supreme Court has said that in construing the act and in considering the matters of transportation "practical considerations" must control. *Southern Railway Co. v. United States*, 222 U. S., 20. Whatever is essential to the movement of the traffic is practically a transportation question. Thus, in *Thames & Morsey Ins. Co. v. United States*, 237 U. S., 19, the court, passing upon the question whether marine insurance was essential to exportation, in order to determine whether the business of insurance could be taxed, said:

The answer must be found in the actual course of trade, for exportation is a trade movement, and the exigencies of trade determine what is essential to the process of exporting.

This language is clearly applicable to transportation by rail over established routes. Whatever is essential to the process is an element that must be taken into consideration in determining cases in which such transportation is involved.

A carrier may give undue preferences to shippers by giving to a shipper or class of shippers special services not accorded to other shippers in connection with the transportation.

Transportation by rail from Canada to points in the United States by through route can only be accomplished by compliance with the law requiring the entry, payment of custom duties, and release. The stoppage, therefore, is not the act of the carrier or of the shipper. It is required by the law of the land. Without compliance with this law the traffic can not lawfully move over the through route. It is true that the carrier is under no obligation to perform this customhouse service, but the carrier must observe it and not move the traffic farther without a customhouse release. The duty of complying with the law rests with the shipper, and he may perform that service in person or through an agent. If the shipper designates a broker to perform this service and release the shipment, the broker is the

agent of the shipper and for this purpose stands in the place of the shipper.

The carrier extends to shippers who employ a particular agent in connection with the transportation three advantages: (1) The carrier makes collections of the duties and broker's charges without expense; (2) while the amount of the duty and broker's charges may not be a carrier's lien, this practice makes it practically a C. O. D. delivery and operates as a security for the payment of the bill; and (3) the agent is saved all the expenses of correspondence with the consignee otherwise necessary to the presentation of his bill and the collection of the charges. These advantages are undoubtedly enough to make the preference undue.

The fact that an agent or broker intervenes, so long as he is in fact the agent of the shipper, does not differentiate the situation from a case where the shipper himself performs the service and is accorded these advantages. It seems clear that the giving of these special advantages to one shipper who paid his duties in person, while refusing the same privileges to other shippers, would be giving an undue preference. The fact that an agent is appointed by the shipper to perform the service and does perform it does not change the situation. It is of manifest advantage to the shipper that the bill for the duties and broker's charges, for which the shipper is liable, accompany the waybills and that delivery can not be made except upon payment of the accompanying bill.

The decisions by the Commission, relied upon by defendant, keep plainly in view the question whether the act to be performed is one required of the carrier or the shipper. If it is a service to be performed by the carrier, then the agency employed is the agent of the carrier, and the carrier is free to choose his agent and to secure the collection of his charges; but if the agency employed is the agent of the shipper, the rule is different.

In *Merchants Cotton Press & Storage Co. v. I. C. R. R. Co.*, 17 I. C. C., 98, 104, the Commission said:

Compression is a service which the carrier procures for its own convenience, and when that service is performed in such manner as not to prejudice or prefer a particular shipper or community the act does not limit the freedom of the carrier to make contracts in respect thereto. Of course, if the arrangement made in any case results in undue preference or prejudice to shippers, the Commission has jurisdiction to correct the wrongdoing.

In *Southwestern Produce Distributors v. Wabash R. R. Co.*, 20 I. C. C., 458, 460, the Commission said:

It is somewhat analogous to the station restaurant, news stand, barber shop, and other conveniences which travelers arriving at a station may make use of if they so desire. \* \* \* They add to the convenience of the passenger be-

fore the transportation by the carrier has commenced or after it has been completed, without adding to the service undertaken by the carrier for the traveler under its published rates.

In *Cosby v. Richmond Transfer Co.*, 23 I. C. C., 72, 77, the Commission said:

If it should appear that any undue or unreasonable advantage or preference were given to one transfer company over any other transfer company then the Commission would undoubtedly have jurisdiction.

The general rule in reference to accessorial services performed by a carrier is well settled. If the carrier performs such services for one shipper and refuses to perform the same services for other shippers at the same place, it constitutes undue preference.

The advantages given by the carrier in the case now under consideration are services performed by the shipper while the transportation is in progress and essential to its movement. The advantage to the shipper is one in connection with the transportation and is given in direct connection therewith by the use of the carrier's facilities.

The complaint in this case raises the question as to the lawfulness of a carrier's practice. The Commission may decide the question as to the lawfulness of the practice, without regard to the person or persons making the complaint. The subject matter is before the Commission in accordance with the provisions of the act. If this preferential service is lawful when accorded to an agent of a shipper, it would be lawful to give the same service and preference to one shipper who pays the duties in person while refusing to give the service and preference to another shipper under like circumstances.

We find that the practice complained of results in undue preference of shippers who make use of the services of defendant's agent as a customs broker and undue prejudice to shippers who employ other customs brokers.

Complainants seek reparation in an amount equal to brokerage fees which they would have collected on shipments of former clients in connection with which the railroad agent at Newport was designated to act as customs broker, his services being employed instead of complainants', it is stated, solely because of the advantages with respect to expensing customs duties and brokerage fees forward. Our finding of undue preference to shippers affords no basis for reparation to complainants and none will be awarded.

An order will be entered in accordance with our findings.

HALL, *Chairman*, dissenting.

ATCHEISON, WOOLLEY, and ANDERSON, *Commissioners*, not participating.

No. 7109 (Sub-No. 2).  
CAPE GIRARDEAU PORTLAND CEMENT COMPANY  
v.  
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY  
ET AL.

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*Submitted September 11, 1916. Decided November 12, 1917.*

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Upon petition divisions prescribed for joint through rates on cement in carloads from Cape Girardeau, Mo., to points in southern Illinois, found reasonable in 35 I. C. C., 109.

*Thomas Bond* for St. Louis & San Francisco Railroad Company and its receivers.

*Frank E. Webster* for Chicago & Eastern Illinois Railroad Company and its receiver.

*A. P. Humburg* for Illinois Central Railroad Company.

*William Gray* for Chicago, Burlington & Quincy Railroad Company.

*C. C. P. Rausch* for St. Louis, Iron Mountain & Southern Railway Company and Missouri Pacific Railway Company.

*Charles P. Stewart* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

*Joseph M. Simon* for Mobile & Ohio Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION ON PETITION TO  
PRESCRIBE DIVISIONS.

**MEYER, Commissioner:**

Our previous report in this proceeding, 35 I. C. C., 109, and the order entered thereon, required the defendants to establish joint rates on cement in carloads from Cape Girardeau, Mo., to points in southern Illinois not in excess of 78 per cent of the combination rates to the same points of destination. Upon supplemental petition filed by the St. Louis & San Francisco Railroad Company, hereinafter called the Frisco, and the Chicago & Eastern Illinois Railroad Company, hereinafter called the Chicago & Eastern Illinois, and their respective receivers, alleging in substance that the joint rates have been made effective in compliance with our order, but that the defendants have been unable to agree upon divisions, the proceeding was reopened for the purpose of receiving such evidence as would enable the Commission to prescribe just and reasonable divisions

of the joint rates thus established. Rates and divisions are stated in cents per 100 pounds.

At the hearing it was announced that agreements as to the divisions of the prescribed rates had been reached between the petitioners and some of the defendants conditioned upon a modification of the original order being granted by the Commission, and under the general prayer of the petition for "such other and further relief as the facts may show them to be entitled to," such a modification was requested. Evidence was introduced to show that the rate adjustment resulting from the Commission's order is illogical in that the application of through rates 78 per cent of the combinations, by routes other than those by which the lowest combinations are made, would result in violations of the long-and-short-haul clause of the fourth section, and some of the defendants are thereby deprived of their longest reasonable hauls. For example, the route through Gale, Ill., a junction point of the Chicago & Eastern Illinois and Illinois Central railroads about 2 miles north of Thebes, is said to be a reasonable route to points on the Illinois Central Railroad between Gale and Brookport; the rates established to some of these points in compliance with the Commission's order, together with the distances via Gale, are:

From Cape Girardeau to—	Dis- tances.	Rates.	From Cape Girardeau to—	Dis- tances.	Rates.
	<i>Miles.</i>	<i>Cents.</i>		<i>Miles.</i>	<i>Cents.</i>
Brookport.....	154	8.5	Carbondale.....	82	7.8
Stimpson.....	125	7.5	Murphysboro.....	76	7.5
Parker.....	116	7.2	Leo Rock.....	63	8
New Denison.....	106	6.6	Grand Tower.....	58	7.7
Marion.....	101	7.5	Ware.....	43	7.2
Cartersville.....	92	6.9	McClure.....	34	6.6

The modification of the order sought would enable carriers to grade the rates from the distant junction points back through the intermediate points to Thebes via different routes without creating departures from the fourth section. Subsequent to the hearing there was filed a statement of the present and proposed rates which was checked and concurred in by most of the defendants. The rates proposed range from 1.6 cents higher to 2.4 cents lower than the rates established in compliance with the Commission's order, and to all the southern Illinois junction points of the Chicago & Eastern Illinois, except Thebes, they are higher than the present rates. The general effect of the proposed changes would be to reduce the differences between the rates by different routes to the same destinations. It appears that this effect can be obtained without increasing any rates beyond the maximum prescribed by the Commission, and no modification of the order is necessary or warranted by the evidence.



In the original report the routes, distances, and rate situation are sufficiently described. The petitioners contend that the rates prescribed should be divided on the basis of the relative service performed, making due allowances for the bridge toll and for minimum revenue to the originating and delivering lines. They propose the following basis: 2 cents to the Frisco for its service from the industry to Chaffee; 1 cent to the Chicago & Eastern Illinois for its service across the bridge to Thebes; the balance to be divided between the lines beyond Thebes on a mileage basis, observing a minimum of 2 cents to the delivering carrier.

It was contended that the Frisco's division should be a fixed amount because its service is the same on all traffic from the complainant's plant through Thebes to southern Illinois points. It appears that the Frisco furnishes the equipment for this traffic, and cement requires tight box cars. This equipment has to be hauled empty to Cape Girardeau from points on the Frisco. The switching service from the industry to Cape Girardeau requires one engine-hour per trip and two trips per day and costs, excluding the overhead, maintenance, and supervision, from \$3.05 to \$3.28 per engine-hour, and a fair earning thereon is estimated at \$4 per car, or approximately 1 cent per 100 pounds. The Frisco makes a charge of \$2 per car for switching from complainant's plant to the Cape Girardeau Northern Railway, a distance of not more than 2 miles. The movement from Cape Girardeau to Chaffee is a line haul of 12.5 miles. The situation at Cape Girardeau is said to differ from that at St. Louis, with which it is compared in the original report, in that there is no arrangement for the reclaim of per diem as at St. Louis, and the switching charge of 1½ cents at St. Louis is made under a reciprocal switching arrangement, while no such arrangement exists at Cape Girardeau. It was contended that the Frisco should receive a division higher than its relative service would entitle it to, because it originates the traffic and can control the routing of all competitive business; and in support of this contention it was testified that division sheets generally accord minima of from 25 to 50 per cent to the lines originating the traffic, and in Illinois divisions are generally based on mileage with a minimum of 25 per cent to the short line, under which basis the Frisco would receive from 1.25 cents to 2.9 cents as its divisions of the rates prescribed to points in Illinois on the Baltimore & Ohio Southwestern and the Mobile & Ohio railroads. The Chicago & Eastern Illinois agreed to subdivide the proportions of the rates accorded them to the Illinois junction points on the basis of allowing a 2-cent arbitrary to the Frisco.



The Chicago & Eastern Illinois asks for a 1-cent arbitrary from Chaffee across the bridge to Thebes, a distance of 15.5 miles. Bridge tolls to other points were cited in comparison as follows: 1.5 cents at St. Louis, Alton, Hannibal, Louisiana, and Memphis; 1 cent at Evansville, Jeffersonville, and New Albany; 2 cents at Louisville, Cairo, and Cincinnati; and 3 cents at Council Bluffs. The basis proposed by the petitioners was refused by the Baltimore & Ohio Southwestern, Chicago, Burlington & Quincy, Mobile & Ohio, and Wabash, Chester & Western railroads. These lines contend that the rates should divide by allowing to the lines to and from the Illinois junction points 78 per cent of their respective rates to and from the junction points because the rates were so made and so prescribed by the Commission. This basis was refused by the petitioners on the ground that the 5-cent rate from Cape Girardeau to the junction points on the Chicago & Eastern Illinois as far north as Mount Vernon was in the nature of a proportional rate and far below normal for the service rendered and that it has since been raised, the present rate to Mount Vernon being 6.2 cents. The petitioners contend that they should not be required to accept 78 per cent of 5 cents, or 3.9 cents, which would yield for the line haul of 130 miles from Cape Girardeau to Mount Vernon 6 mills per ton per mile, out of which allowances must be made for the bridge toll and the terminal service of the Frisco. The witness for the Chicago, Burlington & Quincy Railroad stated that 2 cents would be a fair division for the Frisco under ordinary circumstances, but that in dividing such low rates between three carriers and a bridge, to grant an arbitrary of 2 cents to one line leaves very little for the others.

Because the Commission prescribed rates not in excess of 78 per cent of the combinations it does not necessarily follow that the rates must be made or divided on that basis. This was found to be a convenient method of describing the maximum joint rates found reasonable. If divisions were prescribed on the basis of 78 per cent of each of the factors of the combination rates formerly in effect they could only be applied to rates through the junction points on which the combinations were made, and could not be applied to joint rates lower than 78 per cent of the combinations. The basis proposed by the petitioners will yield the delivering carriers a fair revenue, no instance appearing where the revenue would be less than 6 mills per ton-mile for the delivering line. In *Kosmos Portland Cement Co. v. I. C. R. R. Co.*, 42 I. C. C., 377, we found that the Illinois Central was entitled to a division of 2.2 cents on cement, in carloads, from Kosmosdale to the Ohio River bridge, a distance of 18 miles, on shipments moving through Louisville to points in Illinois, Indiana, and Ohio.

We find that the rates through Thebes prescribed in our former order should be divided as follows: 2 cents to the Frisco for its service to Chaffee; 1 cent to the Chicago & Eastern Illinois for its service from Chaffee across the bridge to Thebes or Gale; the balance beyond Thebes or Gale to be divided on the mileage basis, allowing a minimum of 2 cents to the delivering line. No evidence was offered in regard to the route through Ste. Genevieve, Mo., to points on the Illinois Southern Railway, but counsel for the petitioners stated that an agreement had been reached, and no finding as to the divisions of rates through Ste. Genevieve will be made at this time.

An order in accordance with the above findings will be entered and under section 15 of the act will take effect as part of the original order which became effective November 1, 1915.

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No. 9406.

MINNESOTA & ONTARIO POWER COMPANY

v.

BIG FORK & INTERNATIONAL FALLS RAILWAY  
COMPANY ET AL.

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*Submitted April 26, 1917. Decided November 14, 1917.*

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1. Two carload shipments of news print paper from International Falls, Minn., to Little Rock, Ark., found to have been overcharged. Refund directed.
2. The Commission is not empowered to award counsel fees or to direct the return by carriers of claim papers filed by shippers.

*B. G. Dahlberg* for complainant.

No appearance for defendants.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant is a corporation engaged in the manufacture of news print paper at International Falls, Minn. By complaint, filed November 27, 1916, it alleges that the rates charged on two carloads of news print paper shipped December 22, 1914, and January 11, 1915, from International Falls to Little Rock, Ark., were unreasonable and unlawful, in violation of sections 1, 6, and 10 of the act. Reparation is asked. Rates are stated in cents per 100 pounds.

47 L. C. C.

The shipments, one of which weighed 58,769 pounds and the other 55,493 pounds, moved over the Big Fork & International Falls, Minnesota & International and Northern Pacific railways and the Chicago, Burlington & Quincy Railroad to St. Louis, Mo., and the St. Louis Southwestern Railway beyond. Charges were collected on the first shipment in the sum of \$329.13 at a rate of 56 cents, for which no tariff authority appears, and on the second in the sum of \$257.33 at a rate of 46 cents, based on an erroneous weight of 55,943 pounds. The correct weight was 55,493 pounds. The rate legally applicable was 46 cents: 18 cents to St. Louis and 28 cents beyond, so that the first shipment was overcharged \$58.79, and the second \$2.06. There is no dispute as to the amount of overcharge, but the question presented is whether complainant is entitled to interest on the amount thereof.

We find that the charges assailed were illegal to the extent that they exceeded the charges which would have accrued at a rate of 46 cents per 100 pounds. No evidence was introduced to show that complainant paid and bore the charges on the shipments in question. Defendants will be expected to make refund to the proper party with interest to the date of payment.

Complainant also asks for an award of \$25 as an attorney's fee. We are not empowered to award counsel fees for the prosecution of cases before us. *Meeker & Co. v. Lehigh Valley R. R. Co.*, 236 U. S., 412. It also seeks the recovery of its claim papers from defendants, but this is a matter not cognizable by us.

An order dismissing the complaint will be entered.

47 I. C. C.

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No. 9206.  
L. S. PERDUE  
v.  
**BALTIMORE & OHIO SOUTHWESTERN RAILROAD  
COMPANY ET AL.**

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*Submitted January 25, 1917. Decided November 14, 1917.*

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Complaint alleging that the rate on a less-than-carload shipment of household goods from Fairmont, W. Va., to Portland, Oreg., was unreasonable, dismissed.

*Frank J. Miller* for complainant.

*Paul P. Farrins* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a resident of Hebardville, Ga. By complaint, filed September 26, 1916, he alleges that the one and one-half times first-class rate of \$5.55 per 100 pounds charged by defendants on a less-than-carload shipment consisting of one piano, boxed, one sewing machine, crated, one bundle of carpet, and one box and one chest of household goods that moved November 19, 1915, from Fairmont, W. Va., to Portland, Oreg., was unreasonable to the extent that it exceeded the first-class rate of \$3.70 per 100 pounds. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipment weighed 1,530 pounds and moved over defendants' lines to Portland, and from Portland over the Spokane, Portland & Seattle Railway and the Oregon Trunk Railway to Bend, Oreg. Charges were assessed at one and one-half times the first-class rate, or \$5.55 from Fairmont to Portland, and the first-class rate of \$1.01 from Portland to Bend.

The complaint attacks only the rate from Fairmont to Portland, and neither of the carriers that participated in the movement from Portland to Bend are parties defendant. It is contended that the shipment from Portland to Bend was separate and distinct from the movement up to Portland and performed under a new bill of lading. This bill of lading was not produced. It appears that complainant did not take possession of the shipment at Portland, but that on instructions from complainant the Southern Pacific transferred it

direct to the Spokane, Portland & Seattle at Portland. Charges for the movement to Portland were carried as advance charges in connection with the shipment to Bend and paid at the latter point, and the waybill of the Spokane, Portland & Seattle for the movement from Portland to Bend contains a reference to the connecting line billing and shows Fairmont as the point of origin.

At the time of movement the western classification, which governed this shipment, rated household goods "actual value of each article not to exceed \$10 per 100 lbs. or the proportionate amount thereof if weight is less than 100 lbs. subject to rule 2," first class in less than carloads; and "actual value exceeding \$10 per 100 lbs. subject to rule 2" one and one-half times first class in less than carloads. Rule 2 reads as follows:

Ratings on various articles are conditioned upon actual valuations declared by the shippers at time and place of shipment and the following stipulation must be entered in full on shipping order and bill of lading and signed by the shipper:

I  
We hereby declare the value of the property herein described to be -----  
----- (Shippers' signature.)

Where shipper refuses to declare value at time and place of shipment goods will not be accepted for transportation.

The first-class rate from Fairmont to Portland was \$3.70. There was contemporaneously in effect over the route of movement of this shipment and applicable to less-than-carload shipments of household goods of a declared value of \$10 per 100 pounds or less, a combination rate of \$3.193 composed of a first-class rate of 64.3 cents from Fairmont to East St. Louis and a commodity rate of \$2.55 from East St. Louis to Portland.

No one having personal knowledge of the facts with reference to this shipment testified, the only information available being contained in correspondence offered in evidence. This correspondence indicates that prior to the movement the agent of the Baltimore & Ohio Railroad at Fairmont quoted complainant a rate of \$3.70 on household goods from that point to Portland. The shipment was delivered to the Baltimore & Ohio by a drayman who signed the bill of lading as complainant's agent. The bill of lading contains no reference to the value of the shipment, nor does the record disclose it.

Complainant's representative calls attention to the fact that the articles included in this shipment are not specifically stated in the bill of lading to constitute household goods and contends that it would be proper to consider each item in the bill of lading as an individual shipment in which case the first-class rate would have been applicable to the piano, the sewing machine and the bundle of carpet, irrespective of value. This contention is met by the fact that the articles

in question were offered as one shipment and moved under one bill of lading in which only the aggregate weight and not the weights of the individual items is shown.

The agent of the Baltimore & Ohio erred in permitting this shipment to move without a notation on the bill of lading stating its value. It is not established that any rate other than that assailed would have been applicable had the declaration of value been inserted. As it is not shown whether or not the value of the shipment was declared in connection with the movement from Portland to Bend, we can not determine whether or not the rate charged was properly assessed.

An order dismissing the complaint will be entered.

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No. 8906.

STANDARD ROOFING COMPANY ET AL.

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY  
ET AL.

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*Submitted September 11, 1916. Decided November 14, 1917.*

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Rates on prepared roofing and building paper in carloads from Chicago and Chicago Heights, Ill., to Tulsa and Muskogee, Okla., found to have been unreasonable. Reparation awarded.

*R. D. Sangster* for complainants.

*R. D. Williams* for Missouri, Kansas & Texas Railway Company and its receiver.

*Thomas Bond* for St. Louis & San Francisco Railroad Company and its receivers.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant Standard Roofing & Material Company is a corporation engaged in the sale of prepared roofing and building paper at Muskogee and Tulsa, Okla., and is the successor in interest of the Standard Roofing Company. By complaint, filed May 13, 1916, it is alleged that the rates collected by defendants for the transportation of certain carload shipments of prepared roofing and building paper

from Chicago, Chicago Heights, and Moline, Ill., to Tulsa and Muskogee, between March 19, 1913, and January 18, 1915, both dates inclusive, were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

Two of the shipments, which moved from Moline, March 19, 1913, and March 4, 1914, consigned to complainant, were sold f. o. b. destination. An assignment to complainant of the consignor's claim for reparation was executed more than two years after the dates of delivery. Claims covering these shipments are barred by the statute of limitations.

There remain for consideration two shipments from Chicago, one to Tulsa and the other to Muskogee, which moved in May, 1914, over the Chicago & Eastern Illinois and the St. Louis & San Francisco railroads, and two shipments from Chicago Heights, on January 18, 1915, one to Tulsa and the other to Muskogee which moved in January, 1915, over the Chicago & Eastern Illinois and the Missouri, Kansas & Texas Railway. Charges were collected on the shipments from Chicago at a rate of 52 cents and on the shipments from Chicago Heights at rates of 49 cents to Tulsa and 46 cents to Muskogee.

In constructing rates on this traffic from and to the points in question defendants have for a number of years applied the St. Louis, Mo., basis of rates from Moline and the fifth-class differential of 5 cents over that basis from Chicago and Chicago Heights. Following *Hooker-Hendricks Hardware Co. v. M., K. & T. Ry. Co.*, 34 I. C. C., 3, in which we prescribed on this traffic rates, among others, of 37 cents and 38 cents from St. Louis and East St. Louis, Ill., to Muskogee and Tulsa, respectively, the rates from the points of origin were reduced, the present rates being, from Moline to Muskogee, 37 cents, and from Chicago and Chicago Heights, 42 cents to Muskogee and 43 cents to Tulsa. These rates are satisfactory to complainant, and the only question remaining for consideration is the one of reparation.

Complainants contend that the rates charged from Chicago and Chicago Heights were unreasonable to the extent that they exceeded the rates found reasonable from St. Louis, plus the usual differential of 5 cents.

The Standard Roofing Company was a party complainant in *Hooker-Hendricks Hardware Co. v. M., K. & T. Ry. Co.*, *supra*. It is urged on behalf of defendants that the rate from St. Louis fixes the rates from Chicago rate points and Moline, and that this complaint should properly have been made by amendment to the complaint in that case. But the rates from Moline and Chicago were not in issue there.

On August 16, 1914, defendants established rates on this traffic from Chicago to Muskogee of 46 cents and to Tulsa, 49 cents, which



rates remained in effect until the present rates were established. Defendants contend that these rates would be reasonable to apply at the present time. The relationship between the rates from Chicago and St. Louis is said to be due to the fact that certain lines which serve Chicago, but not St. Louis, insist upon the maintenance of this basis and that other carriers are compelled to make the same adjustment, which it is stated does not apply on all traffic. But it is admitted that there are only a few departures, the only one specifically mentioned being with respect to brick.

Upon the record we find that the rates charged on the shipments in question were unreasonable to the extent that they exceeded the present rates. We further find that the shipments were made as described; that the Standard Roofing Company paid and bore the charges thereon and was damaged to the extent of the difference between the charges collected and those that would have accrued at the rates herein found reasonable; and that the complainant Standard Roofing & Material Company, its successor, is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and the Standard Roofing & Material Company should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

As the rates herein found reasonable have been in effect for more than a year no order for the future is necessary.

47 L. C. C.

No. 8732.  
**PRICE IRON & STEEL COMPANY**  
*v.*  
**GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.**

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*Submitted April 5, 1917. Decided November 13, 1917.*

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**Rate on scrap iron in carloads from Elsdon, Ill., to East Chicago, Ind., not shown to have been unreasonable. Complaint dismissed.**

*Arthur M. Price* for complainant.

*E. F. Flinn* for Grand Trunk Western Railway Company.

*Howard T. Ballard* and *F. W. Flott* for Indiana Harbor Belt Railroad Company.

**REPORT OF THE COMMISSION.**

**BY THE COMMISSION:**

Complainant is a corporation dealing in scrap iron, with its principal office at Chicago, Ill. By complaint, filed March 16, 1916, it alleges that the rate 2.5 cents per 100 pounds charged by defendants on three carloads of scrap iron shipped January 24, 1916, from Elsdon, Ill., a point within the Chicago switching district, to East Chicago, Ind., was unreasonable to the extent that it exceeded 1.5 cents. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in cents per 100 pounds.

The scrap iron was purchased by complainant from the Grand Trunk Western Railway Company, hereinafter called the Grand Trunk, f. o. b. Elsdon. The cars were apparently loaded at Battle Creek, Mich., and moved over the line of the Grand Trunk to its classification yard at Elsdon, where they were held awaiting the drawing of a draft on complainant. When the draft was paid and the bills of lading taken up, complainant directed the Grand Trunk to deliver the cars to the Interstate Iron & Steel Company, an industry with a private sidetrack at East Chicago. They moved by way of the Grand Trunk from Elsdon to Blue Island, Ill., and the Indiana Harbor Belt Railroad thence to East Chicago. The shipments weighed 47,600 pounds, 52,200 pounds, and 68,200 pounds, respectively, and charges were collected in the sum of \$47.05 at a combination rate of 2.5 cents, minimum 60,000 pounds; 1.5 cents from Elsdon to Blue Island and 1 cent beyond. If these shipments had moved from an industry on a private sidetrack at Elsdon, or

any other industry track in the Chicago switching district listed in agent Lowrey's tariff, I. C. C. 29, a rate of 1.5 cents would have applied. Complainant contends that the rate charged was, therefore, unreasonable to the extent that it exceeded 1.5 cents.

No evidence was introduced to show that the charges assessed were intrinsically unreasonable other than a reference to the 1.5-cent rate applicable between industrial sidings. Complainant's claim for reparation is based principally on *Briggs & Turivas v. I. H. B. R. R. Co.*, No. 5347, unreported, and *Price Iron & Steel Co. v. I. H. B. R. R. Co.*, No. 6177, unreported. The facts in the former of those cases, however, differ from those in this case and the finding in the *Price Iron & Steel Co. Case* is here not followed.

In the present case the shipments moved from one of defendants' hold tracks in a classification yard to a private sidetrack, a distance of 33 miles. Defendants contend that the rates applicable between privately owned sidetracks within the Chicago switching limits are abnormally low; that they were established as a result of a compromise between the shippers and carriers in effecting a uniform adjustment of the switching charges between all privately owned sidetracks within the Chicago switching limits; and that they should not be taken as a measure of reasonable rates. They also urge that the rates assailed should be higher than the rates applicable between private sidetracks; that the expense of establishing and maintaining hold tracks and team tracks in Chicago, as contrasted with the cost and upkeep of a private track, which is borne entirely by the industry, fully justifies a higher charge on shipments moving from or to hold tracks and team tracks. In *Independent Brewing Assn. v. C., M. & St. P. Ry. Co.*, 42 I. C. C., 129, we found that higher charges for movements within the Chicago switching district from or to team tracks and industrial sidings than between industrial sidings were not shown to be unreasonable or unduly prejudicial.

We find that the rate assailed has not been shown to be unreasonable, and an order dismissing the complaint will be entered.

COMMISSIONERS ATTCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.

No. 8961.

KANSAS BUFF BRICK & MANUFACTURING COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY  
ET AL.

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*Submitted December 1, 1916. Decided November 14, 1917.*

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Rate legally applicable on brick in carloads from Chanute, Kans., to Jefferson City, Mo., not shown to have been unreasonable. Complaint dismissed.

*Rogers McCray* and *S. J. Lefforge* for complainant.

*Henry G. Herbel* and *Fred G. Wright* for Missouri, Kansas & Texas Railway Company and its receiver; and Missouri Pacific Railway Company and its receiver.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture and sale of brick at Buffville, Kans. By complaint, filed June 12, 1916, it alleges that the rates charged by defendants for the transportation of 14 carloads of common brick from Chanute, Kans., to Jefferson City, Mo., between June 28 and August 20, 1914, were unreasonable, unduly prejudicial, and in violation of the long-and-short-haul rule of the fourth section. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments moved over defendants' lines. They were originally consigned to an agent of the complainant at Sedalia, Mo., who had them rebilled to Jefferson City, Mo. Charges were assessed on all but one carload on the basis of a combination rate of 10½ cents, composed of commodity rates of 6 cents to Sedalia and 4½ cents beyond. One carload was charged a joint commodity rate of 10 cents. It was testified for complainant that the shipments were originally intended for Jefferson City, but were billed to Sedalia and there rebilled in an effort to take advantage of an intrastate rate of 2½ cents from Sedalia to destination. The shipments must be considered as through interstate shipments from point of origin to ultimate destination. The joint commodity rate of 10 cents was legally applicable, and the charges collected in excess of those that would have accrued at that rate should be promptly refunded to complainant.

Effective May 1, 1915, the 10-cent rate from Chanute to Jefferson City was reduced to 8½ cents, and this rate is still in effect. Both the present and the former rates conform to the requirements of the fourth section. The present rate is satisfactory to complainant, and the only question remaining for consideration is with respect to reparation.

The distance from Chanute to Jefferson City is 249 miles, and the 10-cent rate yielded 8 mills per ton-mile. Complainant relies principally upon comparisons with the 6-cent rate from Chanute to Sedalia, 186 miles, and with a rate of 10 cents from Chanute to St. Louis, 374 miles, which yield ton-mile earnings of 6.5 mills and 5.3 mills, respectively. It also cited rates on brick from Buffville to three points in Missouri which are upon a somewhat lower basis than the rates assailed.

For defendants it was testified that the rate on brick from Chanute to Jefferson City was a group rate which applied from practically all brick-producing points in the Kansas gas belt, located in the southeastern part of Kansas, to a destination group extending from Jefferson City to St. Louis, and that as Chanute is located in the eastern portion of the origin group, and Jefferson City on the western edge of the destination group, the distance between those points is not representative of the distances over which the group rate applied; that the 10-cent rate to St. Louis was established upon an unduly low basis in order to meet both rail and water competition from near-by producing points; that the 6-cent rate to Sedalia is a low rate influenced in part by the fact that the Missouri, Kansas & Texas Railway operates a direct one-line route from Chanute to that point; and that the present 8½-cent rate from Chanute to Jefferson City is unduly low and was established to permit Kansas brick to move to Jefferson City in competition with brick produced at Booneville and Versailles, two of the largest brick-producing points in Missouri. Defendants insist that the blanketing of the St. Louis rate back to Jefferson City resulted in a reasonable rate to that point and cited numerous rates on brick in this general territory with which the rate assailed does not compare unfavorably. It was testified that there is practically a 100 per cent empty return movement of the equipment used in the transportation of brick.

We find that the rate assailed is not shown to have been unreasonable, unduly prejudicial, or otherwise in violation of the act. An order dismissing the complaint will be entered.

47 I. C. C.

No. 9159.

**EAGLE PASS LUMBER COMPANY**

v.

**GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY  
COMPANY ET AL.**

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*Submitted December 7, 1916. Decided November 14, 1917.*

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1. Rate on iron pipe, pipe fittings, and boiler tubes in carloads from New York, N. Y., to Eagle Pass, Tex., found to have been legally applicable and not shown to have been unreasonable. Complaint dismissed.
2. Carriers' failure to complete a transportation service contracted for is not a basis for an award of reparation under the act to regulate commerce.

*R. F. Vaughan* for complainant.

No appearance for defendants.

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.**

**BY DIVISION 3:**

Complainant is a corporation engaged in the lumber business at Eagle Pass, Tex. By complaint, filed August 29, 1916, it alleges that the charges collected by defendants on two carloads of iron pipe and boiler tubes and one carload of iron pipe and pipe fittings, shipped from New York, N. Y., to Eagle Pass, destined to Agujita, Sabinas, and Lampacitos, Mexico, during the period from January 23 to February 14, 1913, inclusive, were unreasonable. Reparation is asked. The claim was presented to the Commission informally October 31, 1913. Rates are stated in cents per 100 pounds.

The shipments moved over defendants' lines to Eagle Pass. Charges were prepaid at joint rates applicable from point of origin to final destinations. Prior to the arrival of the shipments at Eagle Pass revolutionary conditions in Mexico resulted in the establishment of an embargo on all traffic moving through Eagle Pass destined to Mexico. The shipments apparently arrived at Eagle Pass during February, 1913, and were there held by the Galveston, Harrisburg & San Antonio Railway Company for a period not definitely established of record, at the expiration of which complainant, at the request of the Galveston, Harrisburg & San Antonio, and in order to release the equipment and help to relieve the congestion at Eagle Pass, surrendered the bills of lading and unloaded the shipments. Subsequently complainant made an independent arrangement with

the parties then in control of the railroads beyond Eagle Pass, as a result of which the shipments were loaded into cars of the Mexican lines in April, 1913, and transported to the original billed destinations. At the time of movement a rate of 57 cents was applicable on this traffic from New York to Eagle Pass over the route of movement, and defendants refunded to complainant the difference between the charges prepaid and those which would have accrued at the 57-cent rate plus a charge of \$3 per car. The record does not show definitely the service for which this latter charge was made, and we can not, therefore, say whether or not it was legally collected.

The measure of the 57-cent rate is not attacked, complainant's contention being that as defendants contracted for the through transportation of these shipments to Mexico and failed to comply with the terms of the contract; and as complainant accepted the shipments at Eagle Pass at defendants' request and for their convenience, the charges to Eagle Pass should have been computed on the basis of the divisions these defendants would have received out of the joint rates upon the basis of which charges were originally collected. These divisions which are not on file with this Commission are stated to have been 51½ cents on the shipments destined to Agujita and Sabinas and 51 cents on the shipments destined to Lampacitos. Defendants were not represented at the hearing, but they requested permission on our special docket to make reparation upon the basis sought by complainant.

Effective February 1, 1916, the joint rates from New York to the Mexican destinations here in question were canceled, provision being made for the application of combination rates. On April 28, 1917, the 57-cent rate from New York to Eagle Pass was increased to 60 cents.

We find that the 57-cent rate charged on these shipments was legally applicable, and that it is not shown to have been unreasonable. The failure of defendants to complete a transportation service which they contracted to perform does not constitute a basis for an award of reparation under the act to regulate commerce.

An order dismissing the complaint will be entered.

ANDERSON, *Commissioner*, dissents.

47 I. C. C.



No. 9277.

**E. I. DU PONT DE NEMOURS POWDER COMPANY**  
*v.*  
**HOUSTON & BRAZOS VALLEY RAILROAD COMPANY**  
**ET AL.**

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*Submitted March 9, 1917. Decided November 14, 1917.*

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Rate on sulphur in carloads from Bryan Mound, Tex., to Connable, Ala., not shown to have been unreasonable. Complaint dismissed.

*V. S. Thomas* for complainant.

No appearance for defendants.

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.**

**By Division 3:**

Complainant is a corporation engaged in the manufacture of explosives at Connable, Ala. By complaint, filed October 23, 1916, as amended, it alleges that the charges collected by defendants on 10 carloads of sulphur shipped from Bryan Mound, Tex., to Connable between June 3, 1914, and July 24, 1915, both dates inclusive, were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded the charges that would have accrued at a rate of 29.15 cents per 100 pounds, plus \$2 per car. Reparation is asked. The claim was presented to the Commission informally within the statutory period. Rates are stated in cents per 100 pounds.

The shipments weighed 583,825 pounds and moved by different routes over defendants' lines. Charges were collected at a combination rate of 51 cents, composed of 15 cents from Bryan Mound to New Orleans, La., and 36 cents thence to Boyles, Ala., plus \$2 per car from Boyles to destination. On August 16, 1915, defendants voluntarily established on this traffic from Bryan Mound to Connable a rate of 29.15 cents, minimum 40,000 pounds, plus \$2 per car. This rate was increased on December 1, 1916, to 29.25 cents, plus \$2 per car.

At the time the shipments moved a rate of 24.41 cents, plus \$2 per car, applied from Sulphur Mines, La., to Connable, 659 miles. Bryan Mound is 862 miles distant from Connable.

The rates from Bryan Mound and Sulphur Mines to Connable are lower than to intermediate points. In June, 1914, in Fourth

Section Order No. 3996 we authorized defendants to establish for a period of six months a rate of 29.25 cents, plus \$2 per car, from Bryan Mound to Connable, which was and is lower than the rate to intermediate points, but this rate was not published. In June, 1915, we again authorized defendants to publish the rate mentioned and it was subsequently established as above shown. Complainant offered no evidence to support the allegations of unjust discrimination or undue prejudice. In support of its allegation of unreasonableness, it relied solely upon the subsequent reduction of the rate.

We find that the rate assailed has not been shown to be unreasonable, unjustly discriminatory, or unduly prejudicial. An order dismissing the complaint will be entered.

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No. 9358.

RAPIER SUGAR FEED COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

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*Submitted April 2, 1917. Decided November 13, 1917.*

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Reparation denied on certain tank-car loads of imported blackstrap molasses shipped from New Orleans, La., to Owensboro, Ky. Complaint dismissed.

*L. S. Stanton, jr., for complainants.*

*William Burger for defendants.*

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainants are W. F. and J. L. Rapier, copartners, engaged in the live-stock feed business at Owensboro, Ky., under the firm name of Rapier Sugar Feed Company. By complaint, filed November 27, 1916, as amended, they allege that the rate of 21 cents per 100 pounds charged by defendant on six tank-car loads of imported blackstrap molasses shipped from New Orleans, La., to Owensboro, during the period from June 23 to August 3, 1914, inclusive, was unreasonable to the extent that it exceeded the subsequently established rate of 15 cents per 100 pounds. Reparation is asked. The claim was presented to the Commission informally June 12, 1916. Rates are stated in cents per 100 pounds.

The shipments moved over defendant's line and charges were collected thereon at a rate of 21 cents, legally applicable. These charges were paid by complainants, the consignees. The consignor invoiced the shipments to complainants at \$12.70 per ton and deducted from the amount of each invoice the freight charges at the rate of 21 cents. Complainants contend that they bought the molasses f. o. b. New Orleans; that they bore the freight charges; and that the shipments were invoiced in the manner indicated merely as a result of the fact that the consignor guaranteed the freight rate not to exceed 21 cents.

Correspondence setting forth the terms of the contract under which this molasses was purchased is in the record. A letter from the consignor to complainant confirms the agreement for "the sale here of five tanks blackstrap molasses, not less than 42 Beaumé at \$12.70 per ton delivered Owensboro \* \* \*," and states that "should the rates decline, we will give you the benefit of same."

We find that complainants did not bear the freight charges on these shipments. *Gloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 40 I. C. C., 738, and cases there cited. The rate was reduced about one year after these shipments moved and has remained 15 cents for more than two years. There is no occasion for an order for the future.

An order dismissing the complaint will be entered.

McCHORD, *Commissioner*, dissenting:

I dissent from the conclusion reached, the reasons therefor being set forth in my dissenting report in the case above cited.

COMMISSIONERS AITCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.

47 I. C. C.

**No. 9171.**  
**E. I. DU PONT DE NEMOURS POWDER COMPANY**  
*v.*  
**PENNSYLVANIA RAILROAD COMPANY ET AL.**

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*Submitted March 9, 1917. Decided November 14, 1917.*

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Complaint against rate on cotton factory sweepings in bales, in carloads, from Philadelphia, Pa., to Hopewell, Va., dismissed for lack of proof.

*Harvey S. Farrow* for complainant.

*Henry Wolf Biklé* for defendants.

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.**

**BY DIVISION 3:**

Complainant is a corporation engaged in the manufacture of explosives at Hopewell, Va. By complaint, filed September 11, 1916, it alleges that a rate of 19.8 cents per 100 pounds charged by defendants on 19 carloads of cotton factory sweepings, compressed, in bales, shipped from Philadelphia, Pa., to Hopewell, during the period from August 2 to August 10, 1915, inclusive, was unreasonable to the extent that it exceeded a rate of 73.5 cents per bale, estimated weight 500 pounds, which was applicable at the time the shipments moved, to cotton, compressed, in square bales. Reparation is asked and the establishment of a reasonable rate for the future.

At the hearing it was testified on behalf of complainant that since the filing of the complaint an investigation by complainant developed the fact that the shipments were cotton linters, and complainant's witness further stated that complainant does not use cotton factory sweepings and is not interested in the rate thereon. The rate on cotton linters is the same as on cotton.

It was testified on behalf of defendants that they have no knowledge of the character of these shipments other than that shown in the billing.

No one who had seen these shipments testified, and upon the record we are unable to determine their consist. The law places upon carriers the duty of collecting and upon shippers or consignees the duty of paying charges upon every shipment at the legally established rates applicable thereto.

An order dismissing the complaint for failure of proof will be entered.

No. 9367.

THOMAS McFARLAND LUMBER COMPANY

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.

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*Submitted March 14, 1917. Decided November 14, 1917.*

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Charges on a carload of lumber from Carryville, Ark., to Cairo, Ill., found to have been legally assessed. Complaint dismissed.

*Ray Williams* for complainant.

*John R. Turney* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant is a corporation engaged in the lumber business at Cairo, Ill. By complaint, filed December 7, 1916, it alleges that unreasonable charges were collected by defendants on a carload of lumber shipped April 1, 1915, from Carryville, Ark., to Cairo. Reparation is asked. Rates are stated in cents per 100 pounds.

The facts are stipulated. The shipment moved over defendants' lines by way of Illmo, Mo. No stenciled load limit was shown on the car in which the shipment moved, but its marked capacity was 60,000 pounds. The shipment was weighed on track scales at Illmo and found to weigh 71,200 pounds. At the time the shipment moved a joint rate of 10 cents applied on lumber in carloads from Carryville to Cairo over the route of movement. The tariff carrying this rate referred to a tariff of the St. Louis Southwestern Railway containing the following provisions:

Rates shown in tariffs carrying reference to this issue will apply on shipments loaded up to the stenciled load limit of the car; in case no stenciled load limit is shown, up to 110 per cent of the marked capacity of the car.

In case car is handled to weighing station and found to be loaded in excess of 110 per cent of the marked capacity, its contents will be transferred into a car of suitable capacity, or if such car is not available at weighing station two cars will be used, the weight of the entire shipment to be divided as nearly equally as possible, the two cars to be billed at the actual weight, subject to the prescribed minimum weight on each car.

A charge of \$5 will in all cases be made to cover cost of transfer and other services incident thereto.

In case car is handled to destination and found to be loaded in excess of 110 per cent of the marked capacity, charges on the shipment will be assessed

at the established carload rate for weight equal to 110 per cent of the marked capacity of the car plus charge at double the established carload rate on the weight in excess of 110 per cent of the marked capacity of the car, the minimum charge for the excess to be \$5.

Although it was ascertained at Illmo that the car was loaded in excess of 110 per cent of the marked capacity, the shipment moved to destination in the original car. Charges were collected in the sum of \$76.40 at a rate of 10 cents on 66,000 pounds, or 110 per cent of the marked capacity of the car, and a rate of 20 cents on the remainder, 5,200 pounds.

Neither the measure of the rates charged nor the rule above quoted are attacked, complainant's sole contention being that as the St. Louis Southwestern failed to comply with the rule quoted by transferring the shipment into another car or cars at Illmo charges should have been assessed at the rate of 10 cents on the total weight.

The first paragraph of the provision quoted restricts the application of the 10-cent rate to shipments which are not loaded above the stenciled load limit of the cars, or over 110 per cent of their marked capacities, and, as this shipment was not transferred as provided in the second paragraph, we find that the charges were legally assessed in accordance with the terms of the fourth paragraph. Defendants admit that they erred in failing to transfer the car at Illmo, but as the rule permitted a transfer into two cars and the assessing of charges based on the minimum for each car plus a \$5 charge for the transfer services, which charges might have exceeded the charges collected, it is not shown that complainant was damaged by defendants' error.

An order dismissing the complaint will be entered.

47 I. C. C.

No. 9388.

**PRACTICAL DRAWING COMPANY**

v.

**CINCINNATI, HAMILTON & DAYTON RAILWAY  
COMPANY ET AL.**

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*Submitted April 11, 1917. Decided November 14, 1917.*

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Rate charged on a less-than-carload shipment of blank white paper cut to size and ready for immediate use, in boxes, from Hamilton, Ohio, to Atlanta, Ga., found to have been legally applicable and not shown to have been or to be unreasonable. Complaint dismissed.

*J. L. Goggans*, for complainant.

*William Burger* for Louisville & Nashville Railroad Company.

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.**

**By DIVISION 3:**

Complainant is a corporation engaged in jobbing school supplies at Dallas, Tex. By complaint, filed August 14, 1916, it alleges that the rate of \$1.059 per 100 pounds charged by defendants on a less-than-carload shipment of paper from Hamilton, Ohio, to Atlanta, Ga., was unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, weighing 13,893 pounds, moved May 25, 1915, over the Cincinnati, Hamilton & Dayton Railway from Hamilton to Cincinnati, Ohio, and thence over the Louisville & Nashville Railroad to destination. It was described in the bill of lading as printing paper, unruled, but, upon recommendation of an inspector of the Southern Weighing & Inspection Bureau, the delivering carrier changed the description to read: "Unprinted forms cut to size ready for immediate use." Charges were collected in the sum of \$147.13, at a combination rate of \$1.059, composed of a rate of 7.9 cents from Hamilton to Cincinnati, governed by the official classification, and the first-class rate of 98 cents beyond, governed by the southern classification. The official classification rated stationery first class and printing paper third class; the first and third class rates from and to these points were and are 7.9 cents. The southern classification provided and provides, under the head of paper, that, unless otherwise specified, all printed forms and all unprinted forms cut to size and ready for immediate use would be rated as stationery, n. o. i. b. n., which was and is rated first class, in boxes, in less than carloads.



The shipment consisted of sheets of blank white paper, 6 inches by 7 inches, in packages of 800 sheets with colored paper markers between each section of 20 sheets, and packed 80 to 100 packages in a box. It was intended for use as practice paper in drawing.

Complainant contends that the paper was book or printing paper, and that the fourth-class rate of 63 cents applicable on printing paper, unruled, n. o. s., should have been applied from Cincinnati to Atlanta, and that the through rate assessed was and is unreasonable to the extent that the component from Cincinnati to Atlanta exceeded and exceeds the fourth-class rate. It is urged that the paper shipped was not ready for immediate use, because it was intended that before being offered for sale it should be placed with a drawing book in an envelope. No further process of manufacture was necessary to make this paper ready for actual use, and it is sometimes sold without the drawing book. Practically the only evidence offered in support of the allegation that the rate charged was unreasonable was a reference to the fact that paper tablets made of the same character of paper were and are rated third class in the southern classification.

We find that the rate assailed was legally applicable and is not shown to have been or to be unreasonable. The complaint will be dismissed.

47 I. C. C.

No. 9394.

**TREXLER LUMBER COMPANY**

*v.*

**NEW YORK, NEW HAVEN & HARTFORD RAILROAD  
COMPANY ET AL.**

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*Submitted April 27, 1917. Decided November 14, 1917.*

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**Allegation that charges on two carloads of lumber from Prentiss, Miss., to Waterbury, Conn., were assessed on excessive weights found not sustained. Complaint dismissed.**

***Eric E. Ebert* for complainants.**

***H. H. Benedict* for New York, New Haven & Hartford Railroad Company.**

***L. W. Watson* for Mississippi Central Railroad Company.**

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.**

**By Division 3:**

Complainants are Harry C. Trexler and Fred H. Sterner, copartners, engaged in the lumber business at Allentown, Pa., under the name of Trexler Lumber Company. By complaint, filed December 20, 1916, they allege that defendants' charges on two carloads of lumber, shipped July 14 and 18, 1914, from Prentiss, Miss., to Waterbury, Conn., were unreasonable in that they were computed on the basis of erroneous weights. Reparation is asked. The claim was presented to the Commission informally within the statutory period.

The shipments consisted of long-leaf yellow-pine timbers, between 13 and 16 feet long, dressed one-half inch scant of invoice dimensions, 12 by 16 inches or 8 by 8 inches. Charges were collected in the sum of \$435.86 at the legally applicable rate of 87 cents per 100 pounds, based upon 58,200 pounds and 59,600 pounds, the respective net weights, less 500 pounds allowed on each car for weight of stakes, registered by the track scales of the originating carrier at Hattiesburg, Miss., a point 45 miles from Prentiss.

Complainants contend that the charges should have been based on lower net weights obtained at Waterbury where the cars were reweighed at their request, viz, 56,320 pounds and 56,800 pounds, respectively, less an allowance of 500 pounds on each car for weight of stakes, or 2,380 and 3,300 pounds, respectively, lower than the weights obtained at Hattiesburg.

The destination weights disclosed an average of 3,631 pounds per 1,000 feet; those at Hattiesburg, 3,815 pounds. Complainants' witness testified that lumber associations in the south estimate long-leaf pine timbers green when dressed to standard dimensions 6 by 8 inches and over to weigh 3,800 pounds per 1,000 feet. In obtaining standard dimensions only one-fourth inch is taken off each face surface of the rough material. It is urged that inasmuch as the timber in question was dressed one-half inch scant of invoice dimensions the weight was less than the average, and that allowing for the greater waste in dressing the timber the weight should not have exceeded 3,530 pounds per 1,000 feet; and that therefore the destination weights were more nearly correct. Complainants also cite an average weight of 3,552 pounds per 1,000 feet disclosed by the weighing on the Hattiesburg scale of three carloads of similar material shipped July 11 and 14, 1914, from and to the same points. These latter shipments were not reweighed at destination.

Defendants submitted evidence tending to establish the accuracy of the scales at Hattiesburg on which the shipments were weighed. They contend that the differences in weights were due to the drying out of the timber in transit. The record discloses that green lumber contains about 33½ per cent moisture; that green yellow pine varies from 3,538 to 4,540 pounds per thousand feet; and that reweighing at destination uniformly shows reductions in weight ranging from 2.2 per cent in the winter and spring to 4.8 per cent in summer and fall.

It is a matter of common knowledge that green lumber shrinks considerably in weight in the process of drying. If seasoned, each of these shipments would have weighed approximately 15,000 pounds less than in the state shipped. These timbers were milled from logs kept in a pond of water until sawed, and the cars had been in transit about 27 and 19 days, respectively, having moved over 1,300 miles before being reweighed. The estimated weights suggested by complainants fail to allow for shrinkage due to evaporation of moisture in transit and are not convincing.

We find that the allegations of the complaint have not been sustained, and an order will be entered dismissing the complaint.

47 I. C. C.

No. 9410.  
**PROCTER & GAMBLE COMPANY**  
*v.*  
**CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS  
RAILWAY COMPANY ET AL.**

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*Submitted April 6, 1917. Decided November 13, 1917.*

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Rate on coconut oil in tank cars from San Francisco, Cal., to Ivorydale, Ohio, found to have been unreasonable. Reparation awarded.

*William H. McGuffey* for complainant.

*R. D. Hunter* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

*Charles Frankenger* for Union Pacific Railroad Company and Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the soap business at Cincinnati, Ohio. By complaint, filed December 26, 1916, it alleges that the rate of 67.1 cents per 100 pounds charged by defendants for the transportation of 103 shipments of coconut oil in tank cars from San Francisco, Cal., to Ivorydale, Ohio, a point within the switching limits of Cincinnati, between June 10 and November 16, 1915, was unreasonable and unjustly discriminatory to the extent that it exceeded the subsequently established rate of 58 cents. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments, which aggregated 5,430,975 pounds, moved as routed over defendants' lines. Charges were collected at the legally applicable combination rate of 67.1 cents, composed of a commodity rate of 55 cents to Danville, Ill., and the fifth-class rate of 12.1 cents, governed by the official classification, beyond.

Prior to the movement complainant asked defendants to establish a commodity rate on coconut oil from San Francisco to Ivorydale, and they agreed to do so. Effective May 11, 1915, a rate of 58 cents was established and is still in effect, but through error it was made applicable on imported oil only and therefore inapplicable to complainant's shipments, which consisted of oil extracted on the Pacific coast from dried coconut meats which had been imported. Defendants' attention was promptly called to the error, but owing to

delay in tariff publication it was not corrected until November 25, 1915, on which date a rate of 58 cents was established and has since been maintained on domestic coconut oil. The present rate is satisfactory to complainant, and its only interest in the case is with respect to reparation.

The distance from San Francisco to Ivorydale is approximately 2,300 miles. The ton-mile earnings under the rate charged were about 5.37 mills; under the 58-cent rate they are 4.64 mills. Complainant cited, by way of comparison, rates of 55 cents contemporaneously in effect on the same commodity from San Francisco to St. Louis, Mo., and Chicago, Ill., at which points it was stated some of complainant's principal competitors are located. The distance from San Francisco to Chicago is approximately 2,280 miles, and the 55-cent rate to that point yields ton-mile earnings of about 4.8 mills. The 55-cent rate to Danville, which point is approximately 2,300 miles from San Francisco, yields earnings of about 4.78 mills per ton-mile, and, as above indicated, the rate charged exceeded the rate to Danville by 12.1 cents for an additional haul of approximately 200 miles.

Generally speaking, defendants' witnesses corroborated the evidence introduced on behalf of complainant. They denied that the rate charged was intrinsically unreasonable upon the general ground that all transcontinental rates are upon a low basis. They admit that that rate did not bear the proper relationship to the rates to Chicago and St. Louis, and that the charge collected for the haul beyond Danville was out of proportion to the additional distance from that point to Ivorydale.

We find that the rate assailed was unreasonable to the extent that it exceeded 58 cents per 100 pounds; that complainant made the shipments as described, and paid and bore the charges thereon at the rate herein found unreasonable; that it was damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

As the rate herein found reasonable has been in effect for more than a year, no order for the future is necessary.

DANIELS, *Commissioner*, dissenting:

The revenue per ton-mile compels me to dissent from the finding that the rate assessed was unreasonable. Its subsequent reduction is no proof to the contrary. Admitting the rate was unduly prejudicial, I see no proof of damage, and therefore dissent from the report herein.

COMMISSIONER AITCHISON did not participate in the disposition of this case.

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No. 9403.

JOHN GUND BREWING COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

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*Submitted April 2, 1917. Decided November 14, 1917.*

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Rate on beer, in carloads, from La Crosse, Wis., to Lemmon, S. Dak., found to have been unreasonable. Reparation awarded.

*S. J. Bolton and W. W. West* for complainant.

*C. L. V. Craft* for defendant.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant is a corporation engaged in the manufacture of beer at La Crosse, Wis. By complaint, filed December 21, 1916, it alleges that the charges collected by defendant on numerous carloads of beer shipped from La Crosse to Lemmon, S. Dak., between September 8, 1914, and April 22, 1916, were unreasonable. Reparation is asked. The claim was presented to the Commission informally June 2, 1916. Rates are stated in cents per 100 pounds.

The shipments aggregated 972,415 pounds, and charges were collected thereon in the sum of \$5,688.89, based on a commodity rate of 58.5 cents, minimum 26,000 pounds.

When the shipments moved there was a proportional rate of 10 cents applicable from La Crosse to Minnesota Transfer, Minn., over the Chicago, Burlington & Quincy Railroad, which rate, together

47 I. C. C.

with defendant's rate of 48 cents from Minnesota Transfer to Lemmon, made a through rate of 58 cents. There was also a combination rate of 58 cents in effect by way of defendant's line, composed of 10 cents from La Crosse to Minnesota Transfer, minimum 30,000 pounds, and 48 cents from Minnesota Transfer to Lemmon, minimum 26,000 pounds. Charges on the shipments in question based on this combination rate would have amounted to more than at the through rate charged, due to the fact that, except in a few instances, the shipments weighed less than 30,000 pounds.

Prior to September 1, 1914, the rate on beer, in carloads, from St. Paul and Minneapolis, Minn., to Lemmon was 48.5 cents, and the rate from La Crosse to Lemmon was 10 cents higher. On the date mentioned, in compliance with our order in *Minneapolis Civic & Commerce Asso. v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 663, the rate from St. Paul and Minneapolis to Lemmon was reduced to 48 cents, but no change was made in the rate from La Crosse to Lemmon until July 1, 1916, on which date it was reduced to 58 cents.

It was admitted for defendant that the rate charged was unreasonable, and willingness to make reparation upon the basis of the subsequently established rate was expressed.

We find that the rate charged on the shipments in question was unreasonable to the extent that it exceeded the subsequently established rate of 58 cents per 100 pounds; that complainant made the shipments as described and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges collected and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$48.89, with interest. An order will be entered accordingly.

47 I. C. C.



No. 8755.  
AMERICAN BRIDGE COMPANY  
*v.*  
NORFOLK & WESTERN RAILWAY COMPANY ET AL.

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*Submitted September 15, 1916. Decided November 14, 1917.*

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Reparation awarded against initial carrier for damages due to the misrouting of six carloads of bridge builders' outfit shipped from Kenova, W. Va., to Greenville, N. J.

*C. S. Belsterling* for complainant.

*William W. Collin, jr.*, for Pennsylvania lines and Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in fabricating and erecting structural steel at New York, N. Y., and is the successor in interest of the American Bridge Company of New York. By complaint, filed March 24, 1916, it alleges that due to misrouting it was subjected to the payment of unreasonable and unduly prejudicial charges for the transportation in June, 1913, of six carloads of bridge builders' outfit from Kenova, W. Va., to Greenville, N. J. Reparation is asked. The claim was presented to the Commission informally June 9, 1915. Rates are stated in cents per 100 pounds.

The shipments, aggregating 338,900 pounds, were delivered to the Norfolk & Western Railway at Kenova by the American Bridge Company of New York, consigned to itself at "Greenville, New Jersey." The bills of lading showed "N&W & Star Union Line" as the route and a rate of 26 cents; and bore the notation "For Free Lighterage. Notify F. A. Bedford, Div. Freight Agent, American Bridge Co., 30 Church St., New York City." The Star Union line is a fast freight line composed of the Pennsylvania lines and the Pennsylvania Railroad. The Norfolk & Western billed the shipments to Columbus, Ohio, destined "Union Line, Greenville, New Jersey" without further instructions. The shipments moved over the Norfolk & Western to Columbus; Pennsylvania system to Nanticoke, Pa.; Central Railroad of New Jersey to Greenville. Greenville is inland and affords no lighterage facilities. The intended destination

was Greenville Piers, N. J., a Pennsylvania Railroad lighterage point in New York harbor about a mile beyond Greenville, and the shipments were subsequently moved thereto over the Central Railroad of New Jersey and Pennsylvania Railroad, and lightered thence to another point in the harbor. Charges were collected in the sum of \$1,152.25, at a rate of 26 cents to Greenville, plus a rate of 8 cents beyond.

The Star Union line basing book provided for a rate of 26 cents to Greenville, in connection with the Central Railroad of New Jersey; and also to Greenville Piers, Pennsylvania Railroad, which included lighterage at the latter point. It showed Greenville as a rate station on the Central Railroad of New Jersey, and contained notations, among others, that Greenville Piers should not be confounded with Greenville, and "for information only," that "all shipments entitled to lighterage delivery must be carded and billed to 'New York Lighterage.'" It further recited that Greenville Piers was a rail terminal of the Pennsylvania Railroad for traffic intended for lighterage within New York harbor.

Complainant contends that the shipments were misrouted by defendants, while the latter insist that the movement to Greenville was due to complainant's error in designating that destination.

We have repeatedly held that the obligation rests upon a carrier's agent to refrain from executing bills of lading which contain provisions that are contradictory and therefore impossible of execution. In this case the routing shown on the bills of lading was complete for delivery at Greenville Piers, but was insufficient to accomplish delivery at Greenville; and the additional notation "for free lighterage" put the initial carrier upon notice that complainant desired to secure ultimate lighterage delivery, included in the 26-cent rate and available only from Greenville Piers. Under these circumstances it was the initial carrier's duty to follow the definite instructions of the consignor in forwarding the shipments, and it is responsible for the increased freight charges resulting from the failure to follow that course.

We find that the Norfolk & Western Railway Company misrouted the shipments; that the shipments were made as described; that the American Bridge Company of New York paid and bore the charges thereon and was damaged by the misrouting to the extent of the difference between the charges collected and the charges that would have accrued based on a rate of 26 cents per 100 pounds; and that the complainant American Bridge Company, its successor, is entitled to reparation from the Norfolk & Western Railway Company in the sum of \$271.12, with interest.

An appropriate order will be entered.

No. 8800.  
**ADVANCE LUMBER COMPANY**  
*v.*  
**SOUTHERN RAILWAY COMPANY.**

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**PORTIONS OF FOURTH SECTION APPLICATION No. 1548.**

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*Submitted July 15, 1916. Decided November 14, 1917.*

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1. Rate on lumber, in carloads, from Maylene, Ala., to Chattanooga, Tenn., found to have been unreasonable. Reparation awarded.
2. Fourth section relief denied.

*J. T. Slatter* for complainant.  
No appearance for defendant.

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.**

**BY DIVISION 3:**

Complainant is a corporation engaged in the wholesale lumber business at Birmingham, Ala. By complaint, filed April 3, 1916, it alleges that the rate of 13 cents per 100 pounds charged on four carloads of lumber shipped from Maylene, Ala., to Chattanooga, Tenn., February 16 and 19, 1915, was unreasonable and in violation of the long-and-short-haul rule of the fourth section. Reparation is asked. Those portions of defendant's Fourth Section Application No. 1548 in which authority is sought to continue rates on lumber from Maplesville, Ala., to Chattanooga, which are lower than the rates contemporaneously maintained on like traffic from Maylene and other intermediate points, were set for hearing with this complaint. Rates are stated in cents per 100 pounds.

Maylene is a local point on the Southern Railway, about 10 miles northwest of Wilton, Ala. These shipments, aggregating 173,300 pounds, apparently moved over defendant's line through Wilton, Aniston, Ala., and Rome, Ga., to Chattanooga, a distance of 281 miles. Charges were collected thereon in the sum of \$225.29 at the class M distance rate of 18 cents, legally applicable. Contemporaneously defendant maintained commodity rates of 10 cents to Chattanooga from practically all of its stations in the general territory in which Maylene is located, including points north of Selma, Ala., such as Burnsville and Maplesville, Ala., which are, respectively, 266 and 248 miles from

Chattanooga, and from points east of Columbus, Miss., such as Bankston, Ala., which is 273 miles from Chattanooga. The rate from Maplesville to Chattanooga was applicable by way of Wilton, Childersburg, Ala., and Anniston, and also through Wilton, Maylene, Birmingham, and Anniston. The rate over the latter route resulted in a departure from the long-and-short-haul rule of the fourth section which was protected by an appropriate application heard with this case. On May 5, 1915, this rate was made applicable from Maylene and a few other near-by points from which commodity rates had not theretofore applied, and that rate is still in effect. Defendant was not represented at the hearing.

We find the rate assailed was unreasonable to the extent that it exceeded 10 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent the charges paid exceeded those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$51.99, with interest.

Orders awarding reparation and denying fourth section relief will be entered, but as the 10-cent rate has been in effect for more than two years no order for the future is necessary.

47 I. C. C.

No. 8756.

MUSKOGEE PRODUCE COMPANY ET AL.

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY  
ET AL.

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*Submitted October 9, 1916. Decided November 14, 1917.*

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Rates on apples in carloads from certain points in Arkansas to Muskogee, Okla., found to have been and to be unduly prejudicial to the extent that they exceeded or exceed by more than 5 cents per 100 pounds the rates contemporaneously applicable from the same point of origin to Fort Smith, Ark.

*J. E. Noon* for complainants.

*Thomas Bond* for St. Louis & San Francisco Railroad Company and its receivers.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainants are corporations and copartnerships engaged in the wholesale produce business at Muskogee and Tulsa, Okla. By complaint, filed March 27, 1916, they allege that defendants' rates of 25 cents per 100 pounds on apples in carloads from numerous points in Arkansas to Muskogee are unreasonable and unduly prejudicial. Reparation is asked on various shipments moving within the statutory period and the establishment of reasonable rates for the future. Rates are stated in cents per 100 pounds.

The points of origin are situated in northwestern Arkansas and, with the exception of Siloam Springs, a point reached by the Kansas City Southern and the Kansas City & Memphis railways, and Healing Springs, Highfill, and Castleville, local stations on the Kansas City & Memphis, are served by the St. Louis-San Francisco Railway, formerly the St. Louis & San Francisco Railroad, and hereinafter called the Frisco. For the purpose of making rates on apples points of origin in Arkansas and points of destination in Oklahoma are grouped. The present rate from the group in which these points of origin are located to the group in which Muskogee is located is 25 cents. Summers, Ark., although grouped with the other points of origin, is 77 miles from Muskogee and under a distance scale of rates on apples, which rates apply instead of specific rates when they are lower, the rate from Summers to Muskogee is 24 cents.

The minimum and maximum distances from the points of origin on the Frisco to Muskogee are 77 miles and 149 miles, respectively. Prior to April 30, 1915, the Frisco maintained distance rates from the points of origin on its line to Muskogee under which the rates for the minimum and maximum distances indicated were 12 cents and 15 cents, respectively. It is alleged that the rates from the Frisco points are unreasonable to the extent that they exceed the distance rates formerly in effect. The Kansas City & Memphis interchanges traffic with the Frisco at Rogers, Ark., which is one of the Frisco points of origin, and with the Kansas City Southern at Siloam Springs. It is alleged that the rates from points on the Kansas City & Memphis to Muskogee should not exceed the rate from Rogers. This contention was apparently abandoned at the hearing, as complainants admitted that rates from points on the Kansas City & Memphis over the two-line route of that road and the Frisco might properly be higher than the rates for one-line hauls over the Frisco for similar distances. The distances from the points of origin which are served by the Kansas City & Memphis, and not by the Frisco, to Muskogee over the Kansas City Southern and the Midland Valley Railroad are greater than the distances in connection with the Frisco, and it is apparently complainants' contention that the defendants whose lines form the longer route should be compelled to meet the rates which complainants seek to have established over the shorter route in connection with the Frisco.

Prior to July 7, 1909, the rates applicable on apples from the points of origin on the Frisco to Muskogee were distance rates which, for distances between 77 miles and 149 miles, ranged from 24 cents to 37 cents. In *Ozark Fruit Growers Assn. v. St. L. & S. F. R. R. Co.*, 16 I. C. C., 134, we prescribed rates on apples from Arkansas to Oklahoma of 40 cents for distances in excess of 220 miles and less than 320 miles and 45 cents for distances of 320 miles and over; and left to the carriers the matter of adjusting rates for distances of 220 miles and less. Subsequently, on July 7, 1909, the Frisco established a scale of distance rates applicable on apples from Arkansas to Oklahoma ranging from 7 cents for 5 miles to 40 cents for 220 miles, and under which the rates for distances between 77 miles and 149 miles ranged from 24 cents to 33 cents. This distance scale is still in effect and applies instead of the specific rates when it makes a lower charge. On July 1, 1912, the Frisco established the 25-cent rate here assailed. At that time it maintained a distance scale of rates on apples between Arkansas and Missouri, ranging from 6 cents for 25 miles and under, to 15 cents for 150 miles, under which scale the rates for distances between 77 miles and 149 miles ranged from 12 cents to 15 cents. Effective October 1, 1912, this

scale, modified to the extent that the application of the 6-cent rate was restricted to distances of 25 miles and over 10 miles, and a 5-cent rate provided for distances of 10 miles and under, was made applicable from Arkansas to Oklahoma.

On April 30, 1915, the provision for the application of these distance rates from Arkansas to Oklahoma was canceled, since which date the rates attacked have applied. During the period from October 1, 1912, to April 30, 1915, the distance scale last mentioned was applicable to the exclusion of the specific rates and also of the distance scale above referred to which was established on July 7, 1909, when it made a lower charge.

The ton-mile earnings under the rates assailed range from 8.36 cents for a distance of 149 miles to 6.23 cents for 77 miles. Complainants cited rates on apples from representative points of origin on the Frisco to stations in Oklahoma, most of which are relatively lower than the rates assailed. But these rates apply for distances considerably in excess of those here in issue and do not establish the unreasonableness of the rates assailed. They also cited relatively lower rates on apples from Arkansas to points in other near-by states; but defendants pointed out that the destination points selected were large markets or storage points for apples and that the rates were influenced by competitive conditions which were not encountered in connection with shipments to Muskogee.

Practically the only evidence with reference to undue prejudice was directed toward the relationship between the rates to Muskogee and to Fort Smith, Ark. The distance scale above referred to, running up to 15 cents for 150 miles, applies to the intrastate transportation of apples from the points of origin to Fort Smith, and the distances are, in most instances, less than those to Muskogee. It is asserted that the maintenance of this basis of rates to Fort Smith is unduly prejudicial to jobbers at Muskogee and in favor of jobbers at Fort Smith, with whom the former compete in territory lying between the two points.

The Frisco explained that it made its rates on apples upon a group basis in order to place the producers at different points in Arkansas, also the jobbers in Oklahoma, upon an equal basis; and that it was influenced in blanketing the 25-cent rate over a considerable territory in northeastern Oklahoma by competition between producers in Arkansas and producers in southern Missouri. It observed that the rates assailed compare favorably with the rate of 40 cents for distances between 220 miles and 320 miles prescribed in the *Ozark Fruit Growers Case*, *supra*, and are lower than the rates for similar distances established by the Frisco following our decision in that case. It insists that the distance rates in effect prior to April 30, 1915, were



too low, and explains that these rates were established to apply to points in Missouri and Arkansas at which storage houses are operated, and that they are in the nature of proportional rates, the Frisco obtaining a further haul from the storage points, but it admits that the scale also applies to shipments not intended for storage. It testified that these distance rates were made applicable from Arkansas to Oklahoma in an agency tariff as the result of an error. In support of this statement it is pointed out that there are no storage houses in Oklahoma, and that the distance rates, which do not apply to distances over 150 miles, would extend only to a very limited territory in that state.

With respect to the rates from points on the Kansas City & Memphis, the Frisco refers to *Kansas City & Memphis Railway Co. Rate Cancellation*, 28 I. C. C., 640, in which we found that rates from points on that road might properly be somewhat higher than from Rogers. This defendant did not attempt to justify the disparity between Fort Smith rates as applied to shipments of apples not intended for storage and the rates to Muskogee. It contends that the distance rates above mentioned as applied to local shipments are unremunerative, and stated that the attempt to increase the rates to Fort Smith is now in litigation in the courts, and that it is willing to eliminate this distance scale entirely and cover the situation by a storage-in-transit provision.

We find that the rates assailed are not shown to have been or to be unreasonable, but that they were, are, and for the future will be unduly prejudicial to Muskogee to the extent that they exceeded or may exceed by more than 5 cents per 100 pounds the rates contemporaneously maintained on apples, in carloads, from the same points of origin to Fort Smith, Ark. The record does not contain proof of damage resulting from this undue prejudice and no reparation will be awarded.

An appropriate order will be entered.

No. 8774.  
**AMERICAN SUMATRA TOBACCO COMPANY**  
*v.*  
**NEW YORK, NEW HAVEN & HARTFORD RAILROAD  
COMPANY ET AL.**

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*Submitted March 22, 1917. Decided November 14, 1917.*

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Rates on secondhand cheesecloth in carloads and less than carloads, from Windsor Locks, Conn., to Quincy, Fla., found to have been and to be reasonable. Shipments found to have been undercharged and overcharged. Reparation awarded.

*Daniel W. Rountree* for complainant.

*Frank W. Gwathmey* for Clyde Steamship Company and Seaboard Air Line Railway Company.

*J. H. Ketner* for Seaboard Air Line Railway Company.

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.**

**By DIVISION 3:**

Complainant is a corporation engaged in the tobacco business at New York, N. Y. By complaint, filed March 10, 1916, as amended, it alleges that the charges collected on three lots of secondhand cheesecloth shipped November 5, 1912, from Windsor Locks, Conn., to Quincy, Fla., were illegal and unreasonable. Reparation is asked and the establishment of reasonable rates for the future. The claim was presented to the Commission informally October 10, 1914. Rates are stated in amounts per 100 pounds.

The article shipped, which was similar to mosquito netting, had been used for a year in shading growing tobacco in Connecticut. It was packed in bundles or bales, not machine pressed, averaging about 93 pounds each. At destination the better pieces, estimated at from 50 to 60 per cent of the whole, were utilized to patch holes in complainant's tobacco shades.

The shipments moved over defendants' lines, and charges aggregating \$308.73 were assessed, based on actual weight of one less-than-carload shipment, 3,700 pounds, and a rate of 69 cents; and on carload minimum weight of 24,000 pounds for each of the other two shipments and a rate of 59 cents. Neither rate can be verified. There was no commodity rate in effect nor was there a specific rating

on secondhand cheesecloth in the southern classification, which governed. Complainant contends, and defendant Seaboard Air Line Railway concedes, that under rule 5 of the southern classification the rating on rags should apply. Defendant Clyde Steamship Company takes the position that this old cheesecloth was used at destination for substantially the same purpose for which it was originally purchased and used, and that therefore it should take the same rating as new cheesecloth. New cheesecloth falls within the description "cotton piece goods, n. o. s.," in the southern classification, which was and is rated first class, any quantity, in bales or boxes. In our opinion the ratings on rags were, under the classification rule referred to, legally applicable to these shipments.

Prior to November 1, 1912, southern classification No. 38 named any-quantity ratings on rags as follows:

Rags:	Class.
In sacks or crates.....	3
In bbls. or hhds.....	4
Pressed in bales.....	A

On the date mentioned southern classification No. 39 canceled these ratings and named the following carload and less-than-carload ratings, which are still in effect except that the carload entry is now subject to graded minima for cars of extra length:

Rags:	Class.
In bags or in bales not machine pressed, l. c. 1.....	2
In bbls. or crates, l. c. 1.....	2
In machine-pressed bales, l. c. 1.....	A
In packages named, carload, minimum weight 24,000 pounds..	A

We find that the second-class rate of \$1.24 was legally applicable on the shipment weighing 3,700 pounds. At that rate the charges would have been \$45.88, so that this shipment was undercharged \$20.85. On the other two shipments the class A rate of 50 cents was legally applicable in connection with a minimum weight of 24,000 pounds. The charges at that rate and weight would have been \$120, so that each of these shipments was overcharged \$21.60.

A number of articles rated class A in the southern classification were cited on behalf of complainant. These articles are not analogous to the one under consideration and are of little value in determining reasonable ratings thereon. It was stated that complainant is now machine pressing its bales of secondhand cheesecloth and that 24,000 pounds can be loaded in a standard car.

Defendant's witness testified that the southern classification, which prior to 1912 had been on an any-quantity basis, now provides carload and less-than-carload ratings on a large number of articles; that rags are ordinarily shipped in machine-pressed bales weighing 10 or

12 pounds per cubic foot; and that shipments in bags or bales not machine pressed weigh 2 or 3 pounds, and never more than 5 pounds, per cubic foot. There were cited, by way of comparison, the first-class rating on cotton piece goods above mentioned, second-class any-quantity ratings on paulins and cloth covers for wagons, and a first-class less-than-carload rating on tents.

The present descriptions and packing requirements conform to the recommendations of the Committee on Uniform Classification, and the official and western classifications provide second-class ratings for rags in less than carloads, in bags or bales, not machine pressed, and in carloads, sixth class and class C, respectively, minima 24,000 pounds, subject to graded minima for cars of different lengths.

We find that the rates legally applicable to these shipments were and are reasonable, but that the charges collected on the two carload shipments were illegal to the extent that they exceeded those that would have accrued at the rate of 50 cents per 100 pounds, subject to a minimum weight of 24,000 pounds, which rate we find was legally applicable; that complainant made the two shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that such charges exceeded those legally applicable; and that it is entitled to reparation in the sum of \$48.20, with interest.

An order will be entered accordingly.

47 I. C. C.

No. 7135.

**LAFAYETTE CHAMBER OF COMMERCE**

**v.**

**ALABAMA & VICKSBURG RAILWAY COMPANY ET AL**

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*Submitted May 26, 1915. Decided November 14, 1917.*

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Rates on salt in carloads from Rittman, Ohio, and grouped points, to Lafayette, La., found unreasonable. Reparation awarded.

*B. F. Martin* for complainant.

*Fred H. Wood* for Morgan's Louisiana & Texas Railroad & Steamship Company.

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.**

**By DIVISION 3:**

The Lafayette Chamber of Commerce, an association of business men of Lafayette parish, La., by complaint, filed July 28, 1914, as amended, alleges that the rates on salt in carloads from Rittman, Ohio, and grouped points, to Lafayette, La., are unreasonable and unduly prejudicial. Reparation is asked on behalf of one of complainant's members, the Merchants Grocery Company, Limited, a corporation engaged in the wholesale grocery business at Lafayette, on a carload of salt shipped from Rittman to Lafayette, June 29, 1914. Rates are stated in cents per 100 pounds.

Lafayette, 146 miles west of New Orleans, La., and 85 miles south of Alexandria, La., is served by the Louisiana Western Railroad and Morgan's Louisiana & Texas Railroad & Steamship Company, the latter hereinafter called the Morgan line. The shipment weighed 42,500 pounds and moved over the Erie and the Toledo, St. Louis & Western railroads to East St. Louis, Ill.; St. Louis Southwestern Railway to Stamps, Ark.; Louisiana & Arkansas Railway to Alexandria; Morgan line to destination. Charges were collected in the sum of \$240.13. No joint through rate was in effect. A combination rate of 56½ cents was applicable: 34½ cents from Rittman to Opelousas, La., and 22 cents from Opelousas to Lafayette. The correct charges were \$239.42, so that the shipment was overcharged 71 cents.

Since July 15, 1914, the western classification, which governs traffic from and to the points in question, has rated common salt, in packages or bulk, in carloads, minimum 37,500 pounds, class C. Prior to

that date no carload rating was prescribed. When that rating was established the class C rate from and to the points was 55 cents. On February 20, 1915, this rate was increased to 55.8 cents and on April 1, 1915, to 67.8 cents, the present class C rate. On April 21, 1916, a joint through commodity rate of 36.2 cents was established on salt, in carloads, from Rittman and grouped points to Lafayette and is still in effect.

In support of its contention that the rates assailed were and are unreasonable to the extent that they exceeded and exceed  $30\frac{1}{2}$  cents, complainant shows that at the time the shipment moved defendants maintained rates from the points of origin on salt, in carloads, of  $24\frac{1}{2}$  cents to Baton Rouge, La., and New Orleans;  $30\frac{1}{2}$  cents to Alexandria and  $34\frac{1}{2}$  cents to Rayne, Opelousas, and Crowley, La. The present rates are: To New Orleans and Baton Rouge, 25 cents; to Alexandria, 34.2 cents; and to Rayne, Opelousas, and Crowley, 36.2 cents. Complainant also cited numerous rates on the same traffic from and to other points for similar distances which tend to support its contention that the rates assailed were unreasonable. It was testified that the establishment of lower rates to certain of the points shown placed Lafayette wholesale dealers at a serious disadvantage in jobbing salt near Lafayette in competition with dealers located at New Orleans and other specified points. Upon the hearing defendants proposed to place Lafayette on the same rate basis as Rayne, Opelousas, and Crowley. The rates to those points were then  $34\frac{1}{2}$  cents. It was stated on behalf of the Merchants Grocery Company, Limited, that this would be satisfactory to it, but the Lafayette Chamber of Commerce insists that a rate of  $30\frac{1}{2}$  cents should be prescribed to Lafayette. The rate of 36.2 cents applies from the points of origin to all points with which Lafayette is in competition except New Orleans, Baton Rouge, Alexandria, and New Iberia, La. The rate to New Iberia is 64.8 cents. Defendants' witness testified that the rates to New Orleans and Baton Rouge are affected by Mississippi River competition, which does not obtain at Lafayette. Alexandria is 85 miles nearer than Lafayette to the points of origin and is in the Shreveport group. The short-line distance from Rittman to Lafayette is said to be 1,162 miles. For this distance the present rate yields approximately 6.2 mills per ton-mile, and based on 42,500 pounds, the weight of the shipment, approximately 13.2 cents per car-mile.

We find that the rates assailed were unreasonable to the extent that they exceeded 36.2 cents per 100 pounds. Any undue prejudice which may have existed has been removed by the establishment of the 36.2-cent rates to Lafayette.

A certain freight allowance was made by the consignor to the Merchants Grocery Company, Limited. The record is clear, however, that the Merchants Grocery Company, Limited, paid the freight charges as such and the matter of allowances or adjustment of freight charges lies outside the scope of our jurisdiction between the parties. We find that the Merchants Grocery Company, Limited, made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation from the defendants over whose lines the shipment moved in the sum of \$86.28, with interest, which includes the overcharge above referred to.

An order awarding reparation will be entered, but as the rates herein found reasonable have been in effect for more than a year, no order for the future is necessary.

47 I. C. C.



No. 9319.  
**CUTLER-MAGNER COMPANY**

v.

**MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE  
RAILWAY COMPANY ET AL.**

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*Submitted March 31, 1917. Decided November 14, 1917.*

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**Following *Kaye & Carter Lumber Co. v. M. & I. Ry. Co.*, 17 I. C. C., 209; *Held*, That charges collected on a carload of bulk salt from Duluth, Minn., to Calgary, Canada, based on the marked capacity of the car furnished, were unreasonable to the extent that they exceeded charges that would have accrued on the basis of the marked capacity of the car ordered. Reparation awarded.**

***B. F. Collins* for complainant.**

**No appearance for defendants.**

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.**

**By DIVISION 3:**

Complainant is a corporation engaged in the salt business at Duluth, Minn., and is the successor in interest of the D. G. Cutler Company. By complaint, filed October 21, 1916, it alleges that the charges collected by defendants on a carload of bulk salt shipped January 9, 1914, from Duluth to Calgary, Canada, were unreasonable. Reparation is asked and the establishment of a reasonable rate for the future. The claim was presented to the Commission informally December 2, 1914.

On or about January 2, 1914, the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo line, was requested to furnish a car of 30,000 pounds capacity for this shipment which weighed 30,000 pounds, but on January 9, 1914, furnished instead for its own convenience a car with a marked capacity of 36,000 pounds. The shipment moved over the Soo line to Portal, N. Dak., and the Canadian Pacific Railway to destination. Charges were collected in the sum of \$194.40, at the legally applicable joint tenth-class rate of 54 cents per 100 pounds, governed by the Canadian classification, and a weight of 36,000 pounds. The tariff governing the movement did not contain a rule providing for the application of the minimum for the size of the car ordered when a larger car was furnished for the carrier's convenience. Defendants were not represented at the hear-

ing. Complainant contends that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at the legal rate, based on the marked capacity of the car ordered. Substantially the same contention was sustained in *Kaye & Carter Lumber Co. v. M. & I. Ry. Co.*, 17 I. C. C., 209.

We find that the failure of defendants to provide a tariff rule to the effect that when a car of the capacity or dimensions ordered by a shipper, provided for in the tariff, can not be furnished within a reasonable time and for its own convenience a larger car is furnished, such larger car shall be used upon the basis of the minimum weight applicable to the car ordered, but in no case upon the basis of less than actual weight, provided the shipment could have been loaded upon or in a car of the size ordered was, is, and for the future will be, unreasonable; that the shipment was made as described; that the D. G. Cutler Company paid and bore the charges thereon, which were unreasonable to the extent that they exceeded the charges that would have accrued on the basis of a car capacity of 30,000 pounds; that it was damaged; and that the complainant, its successor, is entitled to reparation in the sum of \$32.40, with interest. An order will be entered accordingly.

47 I. C. C.

No. 9330.  
**MEMPHIS MERCHANTS EXCHANGE ET AL.**  
*v.*  
**FLORIDA EAST COAST RAILWAY COMPANY ET AL.**

*Submitted May 7, 1917. Decided November 14, 1917.*

**Rates on imported blackstrap molasses in tank-car loads from Key West, Fla., to Memphis, Tenn., found to be unduly prejudicial.**

*James B. McGinnis* for complainants.

*R. Walton Moore* and *Frank W. Gwathmey* for Florida East Coast Railway Company and other southeastern lines.

*William Burger* for Louisville & Nashville Railroad Company.

**REPORT OF THE COMMISSION.**

**DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.**

**BY DIVISION 3:**

This proceeding was instituted by and on behalf of the Memphis Merchants Exchange, a corporation organized for the promotion of the trade interests of Memphis, Tenn., and certain firms and corporations engaged in the manufacture of sweetened animal foods at that point. By complaint, filed November 22, 1916, they allege that the rate on blackstrap molasses from Key West, Fla., to Memphis is unreasonable, and that because the rate is higher than the rates on the same commodity from Key West to Cairo, Ill., St. Louis, Mo., and other points, complainants are subjected to undue prejudice and disadvantage. The allegation of unreasonableness was subsequently abandoned. Reparation is asked on all shipments moved subsequent to the filing of the complaint. Rates are stated in cents per 100 pounds and apply on imported blackstrap molasses, in tank-car loads, of a value in excess of 8 cents per gallon.

The following table shows the rate situation complained of:

To—	From Key West.	From Mobile, Ala., and New Orleans, La.
	<i>Cents.</i>	<i>Cents.</i>
Memphis.....	30.5	12
Cincinnati, Ohio.....	26	18.5
St. Louis.....	24.5	17
Louisville, Ky.....	24.5	17
Owensboro, Ky.....	24.5	17
Cairo.....	22.5	15
Chicago, Ill.....	30.5	23
Kansas City, Mo.....	30.5	23
Cedar Rapids, Iowa.....	32.5	25
Council Bluffs, Iowa.....	32.5	25
Omaha, Nebr.....	32.5	25

Memphis, by certain routes, is intermediate Key West to Cairo, St. Louis, Kansas City, and other of the points above set forth. Certain applications filed by the defendants for relief from the provisions of the fourth section were heard with the complaint. In view of the fact that the carriers' applications for fourth section relief on this traffic from Mobile and New Orleans have not been heard, we will not here consider the former applications.

For complainants it was testified that they compete with manufacturers of animal food located on the Missouri River and at other western points, but that their principal competition is with Cairo and St. Louis.

It will be seen from the table above set forth that the rates from Key West to Ohio and Mississippi river crossings are 7.5 cents higher than the rates to the same points from Mobile and New Orleans, with the striking exception that the rate from Key West to Memphis is 18.5 cents higher than the rates from the Gulf ports. On behalf of defendants the adjustment to the Ohio River and points beyond was explained as follows: Blackstrap molasses imported through Mobile and New Orleans moves from Cuba in tank steamers to the ports where it is pumped into storage tanks and thence loaded into tank cars for rail transportation. Early in the year 1915 the Florida East Coast Railway decided to compete for this traffic, and established rates from Key West to the Ohio River crossings and points beyond 7.5 cents higher than the rates applicable from New Orleans and Mobile. This differential was an attempt to equalize the total cost of rail-water-and-rail transportation from plantation in Cuba to ultimate destination by way of Mobile or New Orleans and the total cost in tank cars all the way; that is, by rail from the plantation to Havana, by car float from Havana to Key West, and all rail beyond Key West. To southeastern and to Mississippi Valley points generally, including Memphis, this differential was not maintained; but the carriers endeavored to maintain a differential of 2.5 cents over the rates from the Gulf ports. There is a resulting blanket rate of 30.5 cents to a large portion of those territories; the rates, reflecting distances from Mobile and New Orleans to some extent, are not uniform and there are departures from the differential. This blanket extends from Waycross and Valdosta, Ga., through Augusta, Athens, and Atlanta, Ga., to Chattanooga, Tenn., and applies as far west as Montgomery and Birmingham, Ala., and Memphis. It is said that the 2.5-cent differential was adopted because the rates from New Orleans and Mobile to interior southeastern territory were on a higher basis than to the Ohio River crossings. The short-line distance from Key West to Memphis is a little over 1,200 miles, of which 522 miles is over the

Florida East Coast from Key West to Jacksonville, Fla. The rate in issue yields a trifle more than 5 mills per ton-mile. The short-line distance from Key West to Cairo is 1,284 miles, for which distance the 22.5-cent rate yields 3.5 mills.

The establishment to more distant points, to some of which Memphis is directly intermediate, of rates the same as, or lower than, the rate to Memphis, is alleged to be due to competition between carriers. The Florida East Coast and its connections, it is said, are obliged to try to meet the rates through Mobile and New Orleans to upper Mississippi and Missouri river crossings if they desire to participate in the traffic. For complainants it is pointed out that Memphis is an important Mississippi River crossing; and that in the ordinary adjustment of rates to and from the far south it has rates approximating 4 cents lower than apply to and from Cairo. In this proceeding the establishment of a rate to Memphis 3 cents below the Cairo rate, or 19.5 cents, is asked.

It is unnecessary to set forth the geographical position of Memphis as a river crossing or again to enumerate its many transportation advantages and the rate adjustments which have arisen therefrom. Apparently Memphis was placed in the group with points in the southeast rather than with the river crossings because of a disagreement between the carriers with respect to divisions.

We find that the rate assailed is, and for the future will be, unduly prejudicial to complainants and unduly preferential of complainants' competitors at Cairo and St. Louis to the extent that it exceeds or may exceed the rate from New Orleans to Memphis by more than the amount by which the rates from Key West to Cairo and St. Louis, respectively, exceed the rates from New Orleans to the same points.

The prayer for reparation was made in anticipation that shipments might move under the present rate, but no shipments are shown to have moved under that rate.

An appropriate order will be entered.

47 I. C. C.

No. 8831.  
A. SCHALL COMPANY ET AL.  
v.  
BALTIMORE & OHIO SOUTHWESTERN RAILROAD  
COMPANY ET AL.

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*Submitted October 13, 1916. Decided November 14, 1917.*

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Rate on stone, rough, sawed four sides or less, in carloads, from points in the Bedford, Ind., district to Omaha, Nebr., not shown to be unreasonable, but found to be unduly prejudicial to the extent that it is not 2 cents per 100 pounds less than the rate contemporaneously applicable on dressed, planed, or sawed stone in carloads from and to the said points.

*Edward P. Smith* for complainants.

*C. A. Lahey, F. Montmorency, W. H. Jones, H. E. Watts, J. G. Morrison, F. B. Clark, H. G. Herbel, Perry McCart, A. P. Humburg,* and *W. F. Peter* for Chicago, Milwaukee & St. Paul Railway Company; Chicago, Burlington & Quincy Railroad Company; Wabash Railway Company; and others.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are corporations engaged in the stone business at Omaha, Nebr. By complaint, filed April 24, 1916, they allege that the defendants' rate of 21.6 cents per 100 pounds on rough stone in carloads to Omaha from Bedford, Ind., and points taking the same rate is unreasonable and unduly prejudicial. The establishment of a reasonable and nondiscriminatory rate is asked. Rates are stated in cents per 100 pounds.

The points of origin are located in the so-called Bedford stone district, which is approximately 75 miles long and 15 miles wide. This district is traversed by the Chicago, Terre Haute & Southeastern Railway from east to west and by the Chicago, Indianapolis & Louisville Railway from north to south, the lines of these carriers intersecting at Bedford, which is approximately in the center of the district and may be considered as a representative point of origin. It is also served by the Baltimore & Ohio Southwestern, Illinois Central, and Bedford & Wallner railroads and the Bedford Stone Railway. On August 1, 1901, a joint rate of 21 cents was established on rough and dressed stone from points in the Bedford district to Omaha.

This rate was maintained until October 26, 1914, when it was increased to 21.6 cents, following *The Five Per Cent Case*, 32 I. C. C., 325. For a period of more than six months in 1912 the Illinois Central maintained a rate of 20 cents on rough and dressed stone from Bloomington, Ind., a point in the Bedford district, to Omaha. With that exception, the same basis of rates has been in effect from Bloomington as from other points in that district. The 21.6-cent rate, which is now in effect, is constructed on the basis of a commodity rate of 11.6 cents from Bedford to East St. Louis, Mo., and the western classification class E proportional rate of 10 cents from East St. Louis to Omaha. The minimum weight is 30,000 pounds.

Bedford stone is a high-grade building stone. It is shipped as rough stone in large blocks which have only been scabbled or roughly trimmed to regular size or shape; as sawed stone, which consists of slabs produced by sawing the rough stone blocks; as planed stone, which has undergone a finishing process; and as figured or carved stone. The 21.6-cent rate applies on rough undressed, dressed, planed, or sawed stone. A combination rate of 28.7 cents is applicable on figured or carved stone from Bedford to Omaha. Most of the Bedford stone received by complainants comes in rough blocks which have only been scabbled or roughly trimmed. These blocks are sawed, planed, and finished by them at Omaha. In the process of sawing and finishing from 25 to 30 per cent of the rough stone is wasted. While complainants contend that the present rate on the rough blocks is unreasonable *per se*, and suggest that a reasonable rate should not exceed 10 cents, their principal grievance is that the present adjustment gives an undue advantage to their competitors who ship sawed and finished stone from the Bedford district to Omaha at the 21.6-cent rate.

Rough stone is shipped in blocks from 6 feet to 12 feet long, 4 feet to 6 feet wide, and 2 feet to 4 feet thick. These blocks weigh from 12 to 25 tons each and generally move on flat cars, three to five blocks to a car, although gondola cars are sometimes used. Planed and finished stone is usually shipped in gondola and box cars. Sawed stone is shipped in about the same dimensions as rough stone, except that it is only about from 4 inches to 10 inches thick. There are practically no claims for loss or damage on rough stone. Sawed stone is liable to breakage in transit, and the planed or dressed stone may be damaged by being chipped.

The value of rough stone at Bedford is about 30 cents a cubic foot; sawed stone, from 40 to 50 cents a cubic foot; and planed and finished stone from 85 cents to \$1.40 a cubic foot. The average loading of the rough stone received by the complainants is approximately 80,000 pounds. Representative shipments of sawed and planed stone



received by complainants varied in weight from 34,800 pounds to 53,000 pounds.

The 21.6-cent rate applies through either the Chicago or St. Louis gateway. Defendants Chicago, Indianapolis & Louisville and Chicago, Terre Haute & Southeastern show that during the year ended April 24, 1916, they originated 175 carloads of stone in the Bedford district destined to Omaha, of which 130 cars were rough stone, and that their average haul was 747 miles and their average loading 75,214 pounds. The short-line distance from the Bedford district to Omaha is by way of St. Louis and is approximately 636 miles. The present rate yields 5.78 mills per ton-mile based on the average haul, and 6.79 mills based on the short-line distance. Based on the average haul and 80,000 pounds, the approximate average loading of complainants' shipments of rough stone, the car-mile earnings are 23.1 cents.

Complainants cited in comparison rates of 12.75 cents and 13.8 cents on brick in carloads from Brazil and Brownstown, Ind., respectively, to Omaha for respective short-line distances of 599 miles and 655 miles. These rates yield ton-mile earnings of 4.25 mills and 4.21 mills, respectively. Brick is moved in gondola cars and box cars. The average loading of the brick produced at Brazil is about 50,000 pounds. Complainants also refer to a rate of \$2.50 per net ton on coal from Zeigler, Ill., to Omaha, a distance of 505 miles, which yields 4.95 mills per ton-mile. The coal is shipped in gondola cars, and the average loading is from 30 to 40 tons. For defendants it is asserted that these rates on coal and brick are the result of highly competitive conditions, which do not influence the rates on Bedford stone. Coal from Zeigler to Omaha passes through the Iowa coal fields, and brick from Brazil and Brownstown competes with brick produced at points near Omaha, at St. Louis, Galesburg, Ill., and points in Iowa.

Considerable evidence was offered by defendants to show that the terminal service at the points of origin is of an unusually expensive nature. The Bedford district is rough and hilly, and in order to reach the quarries it is necessary to build spur tracks from 1 to 8 miles long, with sharp curves, steep grades, trestlework, and bridges. These tracks must be shifted from one ledge to another as new openings are made in the quarries, which expense is borne by the carriers. The stone is lifted from the quarry onto a car, taken to the mill, where it is scabbled or sawed, and is then placed on another car for the line-haul movement. No stone is shipped direct from the quarry to the point of consumption. Most of the rough stone is handled on flat cars for which there is practically no other loading in this territory, and a large part of the equipment is idle

during the winter months when the shipments of stone are light. No demurrage is charged upon cars awaiting loading or unloading at the quarries or mills, although the average detention of foreign equipment thus held is about 15 days. This is due to the fact that a large number of cars must be held in assembling yards in the Bedford district in order to meet the maximum transportation requirements. It is stated that it takes from 35 to 70 days for a car loaded with stone to make the round trip from Bedford to Omaha, and that there is practically no return loading for these cars.

Defendants do not insist that the same rate should be applied on rough stone as on the further finished product, but contend that the present rate is not unreasonable for the transportation of rough stone, and that if a differential is established it should be accomplished by increasing the rate on the finished stone, particularly in view of the fact that the rate was originally established on rough stone, the finished products being added to the stone list as the stone-cutting industry at Bedford was developed.

The commodity descriptions recommended by the Uniform Classification Committee covering natural stone other than granite, jasper, marble, or onyx, in blocks, pieces, or slabs, n. o. i. b. n., and the carload ratings applied thereto in western classification territory are: Rough quarried, class E; sawed, four sides or less (not further finished), class E; sawed, more than four sides, class D; chiseled, dressed, hammered, or sand rubbed, class D; carved, lettered, polished, or traced, class C. There are no joint through class rates from Bedford to Omaha. The proportional rates for classes C, D, and E, from the Mississippi River to Omaha, applicable to traffic originating east of the Indiana-Illinois state line, are 15 cents, 12 cents, and 10 cents, respectively.

Defendants cited numerous rates applying on rough stone from the Bedford district to destinations in various sections, of which those shown in the following table are illustrative:

To—	Short-line distance.	Rate.	Earnings per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Omaha, Nebr.....	636	21.6	6.79
Chicago, Ill.....	246	11.6	9.43
Madison, Wis.....	376	17	9.04
Kansas City, Mo.....	496	21.6	8.709
Buffalo, N. Y.....	553	18.8	6.79
Atlanta, Ga.....	565	21.3	7.71
Fort Dodge, Iowa.....	621	21.6	6.95
St. Paul, Minn.....	642	18.5	5.76
Washington, D. C.....	677	26.3	7.76
Sioux City, Iowa.....	756	22.6	5.97
Sioux Falls, S. Dak.....	794	23.1	5.81
Philadelphia, Pa.....	815	27.3	6.69
New York, N. Y.....	906	29.3	6.46

Some of these rates also apply on dressed stone, but other rates shown in comparison are from 2 cents to 5.2 cents higher than the corresponding rates on rough stone.

There is no other district from which complainants can secure the same quality of stone as that produced in the Bedford district for which there is a considerable demand in Omaha. Complainants are in active competition with dealers in planed and sawed stone located at points in the Bedford district, and, as indicative of the force of this competition, they refer to the fact that Bedford stone contractors secured the contracts to supply the Bedford stone used in a number of large buildings recently constructed in Omaha. The prices quoted by these contractors have been from 20 to 25 per cent less than complainants' prices. The Bedford dealers have recently increased their prices for finished stone, but any advantage that might accrue to complainants by reason thereof is offset by an increase in the price of rough stone at the quarries. As illustrative of the disadvantage to which the present adjustment subjects them, complainants point out that a carload of rough stone, weighing 80,000 pounds, on which the charges from Bedford to Omaha at the present rate of 21.6 cents amount to \$172.80, would leave, when dressed, about 56,000 pounds of finished stone. The charges on 56,000 pounds of finished stone, on which a rate of 21.6 cents also applies, would be \$120.96.

We find that the rate assailed has not been shown to be unreasonable, but that it is and for the future will be unduly prejudicial to complainants to the extent that the rate on stone, rough, sawed four sides or less, in carloads from points in the Bedford district to Omaha is not 2 cents less than the rate contemporaneously applicable on dressed, planed, or sawed stone in carloads from and to the same points. Defendants will be required to remove this discrimination.

An appropriate order will be entered.

47 I. C. C.

No. 9338.  
RANDOLPH HARRISON ET AL.  
v.  
MISSISSIPPI CENTRAL RAILROAD COMPANY ET AL.

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*Submitted May 3, 1917. Decided November 14, 1917.*

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Following the principle applied in *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 114; 33 I. C. C., 164; and *Doran & Co. v. N., C. & St. L. Ry.*, 33 I. C. C., 523: *Held*, That defendants should have provided for the diversion of a carload shipment of lumber from Epley, Miss., to Hanover, Pa., at Potomac Yard, Va., on basis of the through rate from Epley to Hanover plus a maximum charge of \$5 for the extra service incident to the diversion. Reparation awarded.

*Samuel H. Williams* for complainant.

*C. B. Northrop* for Southern Railway Company, Alabama Great Southern Railroad Company, and New Orleans & Northeastern Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are Randolph Harrison and S. H. Williams, trustees of Ward Lumber Company, Incorporated, a corporation engaged in the lumber business at Lynchburg, Va. By complaint, filed November 21, 1916, they allege that the charges collected by defendants on a carload of lumber shipped March 12, 1915, from Epley, Miss., to Potomac Yard, Va., thence diverted to Hanover, Pa., were unreasonable and unjustly discriminatory to the extent that they exceeded the charges that would have accrued on the basis of the joint rate from Epley to Hanover, plus a diversion charge of \$5. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, weighing 58,400 pounds, was delivered to the Mississippi Central Railroad at Epley, March 12, 1915, consigned to the Ward Lumber Company at Potomac Yard. On March 10 the consignee instructed the agent of the Southern Railway at Potomac Yard to notify Ryland Brooks Lumber Company of Baltimore on arrival of the shipment for disposition orders. On March 11 the latter company ordered the car forwarded to Hanover where delivery was made by the Pennsylvania Railroad on March 27. The contents of the car remained unchanged and no out-of-line haul was made.

Charges were collected in the sum of \$230.68 based on a combination rate of 39½ cents: 26½ cents to Alexandria, Va., 2½ cents from Alexandria to Potomac Yard, and 10½ cents beyond. At the time of shipment a joint through rate of 30 cents was maintained over the route the shipment moved. This rate was inapplicable to the shipment as the tariffs of the Southern did not, except under certain circumstances not material here, permit diversion or reconsignment at the joint through rate. Its tariffs now provide therefor on the basis of the through rate from point of origin to final destination, plus a charge of \$5 for the extra services incident thereto.

Upon the record, and following *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 114; 33 I. C. C., 164; and *Doran & Co. v. N. C. & St. L. Ry.* 33 I. C. C., 523, we find that the defendants should have provided for the diversion of the shipment on the basis of the joint through rate of 30 cents per 100 pounds from Epley to Hanover, plus a reasonable charge for the extra services performed at Potomac Yard incident to the diversion; also that \$5 would have been a reasonable maximum charge for the extra service performed. We further find that the Ward Lumber Company, Incorporated, made the shipment as described and paid and bore the charges thereon; that such charges were unreasonable and that the Ward Lumber Company, Incorporated, was damaged to the extent of the difference between the charges paid and the charges that would have accrued on the basis of the rate and extra charge herein found reasonable and is entitled to reparation in the sum of \$50.48, with interest.

An order will be entered awarding reparation to complainants or to such other party or parties as may be lawfully entitled thereto. As the Southern now permits reconsignment or diversion at the through rate plus a charge of \$5 for the extra services, no order for the future is necessary.

No. 9387.  
CHARLES T. WHITE  
v.  
UNION PACIFIC RAILROAD COMPANY.

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*Submitted March 24, 1917. Decided November 14, 1917.*

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The absence from defendant's tariffs of a "two for one" rule in connection with shipments of cattle from Clay Center, Kans., to Kansas City, Mo., found to have been and to be unreasonable. Reparation awarded.

*H. W. Stackpole* for complainant.

*A. H. Hamilton* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant is a resident of Clay Center, Kans. By complaint, filed December 1, 1916, as amended, he alleges that unreasonable charges were collected on a shipment of cattle forwarded March 27, 1916, from Clay Center to Kansas City, Mo. Reparation is asked.

Several days before the shipment moved complainant ordered a 40-foot stock car, which defendant's agent promised to furnish. No such car was available at the time of shipment, although the cattle could have been loaded therein, and complainant was compelled to use two 36-foot 6-inch cars, the waybills bearing notations that the two cars were furnished in lieu of a 40-foot car ordered. Complainant loaded 22,400 pounds into one car, 5,200 pounds into the other. Charges were collected in the sum of \$64.38, at the carload rate of 14.5 cents per 100 pounds legally applicable and actual weight on the first car, and at the same rate and minimum of 22,000 pounds applicable on the second car. The minimum in connection with a 40-foot car was 24,000 pounds. Had the shipment moved in a car of that capacity, the charges at the 14.5-cent rate and actual weight would have been \$40.02, and reparation is asked upon that basis.

The tariff naming the rate under which the shipment moved provided graduated minima for stock cars of different sizes, including 40-foot cars, but did not contain a rule to the effect that when the carrier could not furnish a car of capacity or dimensions ordered by the shipper, and for its own convenience furnished two smaller

cars, such cars might be used on the basis of the minimum weight of car ordered.

For defendant it was stated that it owns no cattle cars over 36 feet 6 inches in length, but that it always stands ready to furnish larger cars ordered whenever it is possible to do so. Also that a 40-foot car could have been placed for this shipment had its employees exercised due diligence. A willingness to pay the reparation asked was expressed, but the establishment of a "two for one" rule is resisted on the ground that other carriers in this territory do not provide such a rule in connection with cattle shipments, and also on account of the apprehension that if established it would be abused by shippers.

Rule 66 of Tariff Circular 18-A states that carriers' tariffs should contain a "two for one" rule, and provides that in case of controversy between shippers and carriers caused by the absence of such a rule from tariffs which provide graduated minima for cars of different sizes, we will regard such tariffs as prima facie unreasonable.

We find that the failure of defendant's tariff to provide a "two for one" rule in connection with shipments of cattle from and to the points named was, is, and for the future will be, unreasonable; that the charges assessed on the shipment as described were unreasonable to the extent that they exceeded \$40.02; that complainant made the said shipment and paid and bore the charges thereon herein found unreasonable; that he has been damaged to the extent of the difference between the charges paid and those herein found reasonable; and that he is entitled to reparation in the sum of \$24.36, with interest.

An appropriate order will be entered.

47 I. C. C.



No. 7892.<sup>1</sup>  
**ROYAL MILLING COMPANY**  
*v.*  
**GREAT NORTHERN RAILWAY COMPANY.**

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*Submitted November 3, 1916. Decided November 12, 1917.*

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1. Maintenance of a charge of 2 cents per 100 pounds for milling in transit of wheat at Great Falls subjects complainant to a disadvantage as compared with terminal mills for which defendant alone can not be held responsible.
2. Total charges exacted by Great Northern Railway on wheat which is shipped from points in Montana on its line between Butte and Great Falls and between Great Northern Junction and Great Falls, to Great Falls, there milled into flour and the flour shipped to destinations in North Dakota on the line of the Great Northern Railway found to be unduly prejudicial to the complainant in violation of sections 3 and 4 of the act; to remedy which the defendant should publish and maintain through rates from the points of origin involved to destinations in North Dakota observing as maxima thereon the basis outlined in the report.

*O. W. Tong* for complainant.

*John F. Finerty* for defendant.

**REPORT OF THE COMMISSION UPON REARGUMENT.**

**MEYER, Commissioner:**

The original report in this proceeding is *Royal Milling Co. v. G. N. Ry. Co.*, 41 I. C. C., 29. Reference may be had to that report for a full statement of the issues and facts.

In the first of these cases complainant attacks as unreasonable and unduly prejudicial the aggregate rates upon which wheat in carloads is shipped from points in Montana on defendant's line into Great Falls, there milled into flour, and the flour shipped to destinations in North Dakota on defendant's line, and asks that a reasonable adjustment of rates on wheat from Montana points to destinations in North Dakota be established, under which the wheat may be milled into flour at Great Falls, without additional charge, observing the rates on wheat from points of origin to Minneapolis, Minn., as maxima. Complainant alleges that the aggregate charges for transportation to destinations in North Dakota are in violation of the long-and-short-haul clause of the fourth section in that they exceed

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<sup>1</sup> The report also embraces Nos. 7893, *Same v. Same*, and 7894, *Royal Milling Company v. Great Northern Railway Company et al.*; and Portion of Fourth Section Application No. 827.

the charges for similar transportation service to Minneapolis, a point to which the stations in North Dakota are intermediate.

The complaints in Nos. 7893 and 7894 in substance attack as unreasonable and unduly prejudicial the transit charge at Great Falls and also the aggregate charges, consisting of the freight rates plus the transit charge, on which shipments of wheat in carloads are made from points on defendant's line in Montana to Great Falls; there milled into flour and the product shipped to St. Paul, Minn., Minneapolis, and other points, known as eastern terminals, on the one hand, and to Seattle and Tacoma, Wash., Portland, Oreg., and other points, known as western terminals, on the other. Reparation is asked in connection with Nos. 7893 and 7894 for the full amount of the transit charge.

With respect to No. 7892 we said, at page 30:

This case and the pertinent portion of the fourth section application are held open for further hearing and will not be further considered in this report.

With regard to the other complaints we said, at pages 32, 34, and 35:

The rates for the carriage of the wheat being no more than is just and reasonable for the through service, we see no ground, in the absence of undue prejudice to or unjust discrimination against complainant, for requiring the performance of a special and expensive service without additional charge. \* \* \* We are of opinion and find that neither the present charge of 2 cents nor the former charge of 2½ cents for milling in transit at Great Falls has been shown to be unjust or unreasonable. \* \* \* Upon this record we are of opinion and find that defendant's transit charge of 2 cents on wheat milled at Great Falls is not shown to be unduly prejudicial to complainant or Great Falls.

After the promulgation of our report complainant filed a petition for oral argument in the three cases, stating, with regard to No. 7892 and the fourth section application, that the parties have presented all pertinent facts and "that an oral argument in the said case, without further hearing, will enable this Commission to dispose of the said complaint and fourth section application on their merits." Defendant's reply asks that the petition be denied, "except that the defendant alleges that the Commission should find affirmatively that no fourth section violations result" from the existing situation.

As neither party desired the further hearing contemplated by the Commission for the purpose of allowing them, if possible, to present a more comprehensive record in No. 7892, the entire proceeding was reopened and oral argument had.

#### NOS. 7893 AND 7894. SHIPMENTS TO EASTERN AND WESTERN TERMINALS.

The issues in these cases were disposed of in our original report and for convenience will be considered first. Complainant frankly

states that it is not concerned with the wheat rates and is not seeking their reduction, its interest being centered in the transit charge. Its position is that the miller at an interior point should be on a substantial equality with the terminal miller and that the present transit charge of 2 cents per 100 pounds is unreasonable.

During the period from April 1, 1913, to July 1, 1915, complainant shipped 986 cars of flour to eastern and 562 to western terminals. The former were in most instances sold f. o. b. Chicago and points farther east. The principal markets for the western shipments were at the western terminals. Minneapolis millers and millers located at the western terminals draw grain from Montana and sell the product in competition with the complainant. From Great Northern points of origin here involved to Chicago and Chicago rate points through rates are in effect  $2\frac{1}{2}$  cents lower than the combination on Minneapolis with transit at Great Falls and Minneapolis upon the same terms, namely, 2 cents per 100 pounds. Therefore to Chicago complainant can ship upon an equality with millers located at Minneapolis. This, however, is not true to points farther east to which no joint through rates are in effect from Montana points of origin. Minneapolis millers can draw grain from Montana points and ship the product to points east of Chicago at the Minneapolis combination with no transit charge and therefore at an advantage of 2 cents over the Great Falls miller. Millers located at the western terminals have the same advantage, particularly on the sale of flour at the terminal points. On shipments to California complainant has been equalized with western terminal millers by transit at Great Falls without extra charge at through rates made by combination on the western terminals. In previous opinions the Commission has considered the importance of granting transit upon grain at all points on a through route at which transit may be used, so as to prevent undue preference and advantage to terminal and rate-breaking points. *In re Transportation of Wool, Hides, and Pelts*, 23 I. C. C., 151; *Southern Illinois Millers Asso. v. L. & N. R. R. Co.*, 23 I. C. C., 672; *Missouri River-Illinois Wheat and Flour Rates*, 27 I. C. C., 286; *Fabrication in Transit Charges*, 29 I. C. C., 70; *Henderson Commercial Club v. I. C. R. R. Co.*, 36 I. C. C., 20.

The defendant, however, charges 2 cents per 100 pounds for transit on Montana grain at all points along its line, and since its line does not extend beyond the eastern terminals it can not be held to have unduly preferred millers there located by reason of the fact that they are able to ship grain in and flour out upon combination rates to points east of Chicago and thereby in effect secure at a lower total charge a like service to that accorded complainant. Nor does the record support a finding that the present total charges on grain from

Montana points milled in transit at Great Falls and the product shipped to eastern and western terminals are unjust or unreasonable. Nevertheless the fact remains that in shipping the product of Montana grain to points east of Chicago complainant is at a disadvantage as compared with terminal millers, and although the defendant alone can not be held responsible for this situation it is suggested that, either in conjunction with its connections, or by changing its own rates, defendant effect such an arrangement as will relieve the complainant of this disadvantage. Competition in grain and flour is national in scope, and transit should not be regarded merely from the standpoint of the service performed at any particular point. Unless substantial rate equality is maintained at points on through routes it is inevitable that the milling industry will be unduly concentrated at more or less arbitrarily selected points. The suggestion is made of record that transit on grain at Great Falls necessitates a switching movement of over 9.8 miles to and from the complainant's mill, and that therefore the transit charge might well be higher at Great Falls than elsewhere. As bearing upon this suggestion, however, it should be pointed out that on a great many commodities, including grain and grain products, the carriers in many instances apply blanket rates which are the same from all points within a wide area, often a hundred miles or more in extent. Such blankets are maintained for the same reason that transit is generally established upon like terms at all points along the through line of movement, namely, to effect a rate equality believed to be just and reasonable. The extra service necessitated by transit at Great Falls is inappreciable in comparison with the extra distance it is often necessary to haul traffic from the farther points in a blanket at the same rates as apply from points closer to the destination. In most sections of the country carriers have granted transit upon terms which effect substantial rate equality as between country mills and mills located at rate-breaking and terminal points. Defendant and other carriers located in the restricted area within which transit charges on grain exceeding one-half cent per 100 pounds are exacted would be following the example of a majority of the carriers in the country by effecting substantial rate equality as between millers located at points along the line of through movement and millers located at rate-breaking and terminal points. If the carriers continue to publish rates on grain and grain products from Montana to eastern destinations which break on the twin cities substantial rate equality will be effected by permitting transit at country mills at the total through charges plus a transit charge not exceeding one-half cent per 100 pounds. The necessary rate equality may also be effected by establishing in and out rates at country mills

no higher than the total in and out rates at the twin cities or other rate-breaking points, or by substituting for the present rates through rates from the point of origin of the grain to the ultimate destination of the flour with a transit charge at all intermediate points, including those which are now rate-breaking points. The end sought is such a readjustment as will avoid undue preference and advantage to terminal and rate-breaking points. Our remarks in this respect are in consonance with what was said in *Southern Illinois Millers Assn. v. L. & N. R. R. Co.*, 23 I. C. C., 672. In that case we said, at pages 676-678, with regard to charging country mills in the direct line of movement one-half cent transit over and above the sum of the rates in and out of St. Louis:

The incidental discrimination which results from the publication of this kind of a tariff may be overlooked, since it can not well be avoided, but the substantial disadvantage under which these complainants are put by the charging of this milling-in-transit penalty, while their competitors at St. Louis, whose flour is also handled by these defendants, are charged nothing, is a substantial discrimination which in our opinion is undue and should be corrected.

and with regard to the imposition of what is in effect a penalty much more than one-half cent per 100 pounds at stations on the Louisville & Nashville east of St. Louis:

When the Louisville & Nashville publishes this specific rate from St. Louis it thereby makes itself a link in the through transportation of the grain or the product from the point of origin to destination, and whatever privileges are accorded to the mill at St. Louis in the way of milling this grain in transit ought to be accorded to mills upon its own line. It is no hardship to require that this be done, whether its line be direct or circuitous, and unless it is willing to submit to this condition it ought to retire from the business. The day is fast disappearing, if it has not already disappeared, when discriminations like this can be excused by specious and sophistical reasons in which "my competitor" and "my connection" are the most prominent words. Some reason for the discrimination must be shown beyond the whim of another carrier.

No formal order can now be made, for this matter is not included in the complaint, although, as already stated, the facts were brought out in testimony and have been discussed in argument. It is possible that no order could ever be made which would deal with this situation so long as these reshipping rates from St. Louis are permitted, and that the only way of removing this discrimination would be to compel the establishment of joint rates from the point of origin to destination as contended for by this complainant. We should be, however, extremely reluctant to adopt this course, and shall not do so until the carriers have been given the fullest opportunity to act themselves. The very least that should be done, and this these carriers certainly can do, is to permit milling in transit upon all lines by which this traffic can move from St. Louis to eastern destinations, at a penalty not exceeding one-half cent per 100 pounds.



## NO. 7892. SHIPMENTS TO NORTH DAKOTA.

There are no through rates under which wheat from Montana to destinations in North Dakota may be milled in transit at Great Falls. Such shipments are charged the rate on wheat to Great Falls and the rate on flour thence to destination.

To eight destinations in North Dakota selected by complainant as representative, to which the average rate on flour from Great Falls is 28.43 cents, it was testified at the hearing that the aggregate charges from Montana points consisting of the wheat rate to Great Falls plus the flour rate beyond exceed the rate to Minneapolis on wheat milled in transit at Great Falls in amounts ranging from 0.43 cents to 16.43 cents. It was stated at the argument that the Montana commission has recently reduced the rates on wheat from the Montana producing points to Great Falls, but the amounts of the reductions are not of record.

Other compilations show that millers at Minneapolis and at Devils Lake, N. Dak., could mill Montana wheat and place the product at certain points in North Dakota, Manitou and Minot for example, on a substantial parity with complainant, despite a disadvantage in distance that, in the case of Minneapolis, is quite marked. The rates from Devils Lake to Manitou and Minot are intrastate rates.

It appears that milling in transit at Great Falls is permitted on wheat for points intermediate to the western terminals; and complainant alleges that prior to July 25, 1911, transit was permitted on shipments to destinations in North Dakota. Defendant replies that transit on westbound shipments, for intermediate points, was compelled by competition with the Milwaukee and the Northern Pacific; and that, while a literal reading of the tariff for a time prior to 1911 might authorize transit on North Dakota shipments, it was never the intention to permit such transit, and, so far as the records show, transit was given on one shipment only. Neither of these matters is very fully covered by the record.

In justification of the nonapplication of transit on Montana wheat destined to points in North Dakota, it was testified for defendant that it has granted transit to the intermediate miller on shipments moving to terminals, where he would otherwise be at a disadvantage, in order to place him on an equal footing with the terminal miller except for the transit charge. As millers at Devils Lake and Minneapolis can ship flour milled from Montana grain to destinations in North Dakota only by paying the combination of the wheat rate to the milling point plus the flour rate to destination, complainant, which has the same adjustment, is under no substantial handicap in North Dakota. It is insisted that to grant transit at Great Falls on

such traffic would give complainant an advantage over its competitors.

The following table shows a comparison of the rates from Judith Gap, Mont., to certain North Dakota destinations when the wheat is milled into flour at Great Falls and Minneapolis:

To—	Milled at Great Falls.	Dis- tance.	Milled at Minneapolis.	Dis- tance.
	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>
Manitou.....	43½	608	49	1,670
Stanley.....	44	619	49	1,658
Berthold.....	45	651	48	1,627
Minot.....	46	673	48	1,604
Towner.....	50	715	47	1,562

From this table it will be seen that on shipments to Berthold and Minot the miller at Great Falls has an advantage in rates over the Minneapolis miller of 3 and 2 cents, respectively, although the distance favors the Great Falls miller by 976 and 931 miles, respectively; whereas to Towner the Minneapolis miller has an advantage of 3 cents in the freight rate, although laboring under a disadvantage as to distance of 847 miles. While it is true the record shows that during a period of something over two years complainant shipped only 37 cars of flour from Great Falls to destinations in North Dakota, this may easily result from the rate adjustment under attack. Geographically North Dakota bears the same relation to Montana as to Minnesota, and no justification has been shown for these striking advantages enjoyed by the Minneapolis miller.

The fourth section violation here involved arises from the fact that the charges on shipments of wheat from Montana points milled in transit at Great Falls and destined to points in North Dakota intermediate to the eastern terminals are higher than the charges on shipments of wheat from the same points of origin milled in transit at Great Falls and destined to the eastern terminals. Upon the hearing the defendant at first treated this situation as one involving a violation of the fourth section and presented evidence accordingly, but later reached the conclusion that the prohibition of the fourth section does not apply. The defendant contends that no fourth section violation is incurred in the movement to Great Falls, since the same charge is made for this part of the haul whether the grain is destined to North Dakota or to the eastern terminals, nor on the haul from Great Falls, since that involves a comparison of unlike rates, namely, local rates to North Dakota points and the balance of the through rates from the points of origin of the grain to the eastern terminals. It is true the Commission has held that in determining whether a departure from the fourth section exists like rates



should be compared with one another. *Southern Illinois Millers' Asso. v. L. & N. R. R. Co.*, 23 I. C. C., 672. This means that the mere fact that a local rate to an intermediate point is higher than the proportional rate to a more distant point does not of itself constitute a departure from the fourth section. The underlying reason for this conclusion is that the movement on the local rate is an independent movement from the local point of origin to the local destination, while the movement on the proportional rate is a part of a through movement, and the total rate applied for the through movement is greater than the rate applied to the shorter local movement included within the longer. However, the fourth section is violated if the application of a local rate on a shipment from the same point of origin as that on which a proportional rate would apply results in a higher through charge to an intermediate point than to a more distant point, and that is the situation here involved.

In the instant case the rates inbound and outbound at Great Falls must be considered together. It is not disputed that the total charges in and out on shipments to North Dakota points are higher than on shipments to eastern terminals. But the defendant argues that to make the fourth section prohibition applicable to a combination of wheat rates to Great Falls and flour rates beyond which are higher to intermediate than to more distant points the wording of the act would have to be changed so as to make it applicable to like "kinds," instead of to like "kind" of property. The prohibition referred to reads as follows:

That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, etc.

The defendant's argument presents a strained construction of the act. Shipments of grain milled at Great Falls and the product in the one case shipped to North Dakota and in the other to eastern terminals consist in both instances of the same kind of property. It is true that the grain destined to the eastern terminals has been changed in form at Great Falls, but the grain from the same points of origin destined to intermediate points undergoes the same change, and the property is in both cases precisely of the same kind in the sense that this term is used in the act. The shipments are identical in every respect except as to the points to which they are destined.

Cases involving situations somewhat analogous to that presented are *Proportional Rates to Ohio River Crossings*, 43 I. C. C., 458; *Rates on Grain Milled in Transit*, 35 I. C. C., 27; and *Duncan & Co. v. N., C. & St. L. Ry.*, 16 I. C. C., 590; 21 I. C. C., 186; 35 I. C. C., 47 I. C. C.

477. The Supreme Court in passing on the latter case in *U. S. v. Louis. & Nash. R. R.*, 235 U. S., 314, 326, said:

\* \* \* And it needs no argument to demonstrate that the application of the principle of public policy which the statute embodies is to be determined by the substance of things and not by names, for if that were not the case the provisions of the statute would be wholly inefficacious, as names would readily be devised to accomplish such a purpose.

The fourth section violations involved arise from rates which became effective subsequent to the effective date of the amended fourth section and to the filing of Fourth Section Application No. 827, which was set down for hearing in connection with this proceeding, and are therefore not covered thereby. Nor are they authorized by any order of this Commission. The rates charged complainant on shipments to North Dakota points were unlawful in so far as they exceeded the rates contemporaneously maintained on like traffic to eastern terminals.

However, merely a compliance with the fourth section will not afford complainant adequate relief. The defendant could comply with the fourth section and still charge complainant as much on shipments from Montana points milled in transit at Great Falls, the product destined to North Dakota points, as the charges on shipments of grain from the same points of origin milled in transit at Great Falls and destined to eastern terminals, although the haul is from 197 to 617 miles greater to eastern terminals than to points in North Dakota.

We are of the opinion and find that the total charges exacted by defendant on wheat which is shipped from points in Montana on its line between Butte and Great Falls, and between Great Northern Junction and Great Falls, to Great Falls, there milled into flour and the flour shipped to destinations in North Dakota on defendant's line are unjustly prejudicial to the complainant at Great Falls and unduly preferential of its competitors at the eastern terminals, in violation of section 3 of the act, in order to remedy which the defendant should publish and maintain through rates on wheat from the points involved herein to destinations in the eastern portion of North Dakota which shall not exceed the rates on wheat from the same points of origin to Minneapolis, such that the aggregate charges shall be less than the aggregate charges on wheat milled at Great Falls destined to eastern terminals by at least  $1\frac{1}{2}$  cents to destinations in eastern North Dakota, and such that the aggregate charges to more westerly destinations in North Dakota shall be less than the aggregate charges to the eastern terminals by amounts in excess of  $1\frac{1}{2}$  cents, dependent upon the lesser distance traversed. Defendant will be expected to file tariffs in conformity with the views herein expressed effective on or before January 1, 1918.

HALL, *Chairman*, dissenting:

I am unable to agree with the majority report. In our original report in these proceedings, *Royal Milling Co. v. G. N. Ry. Co.*, 41 I. C. C., 29, we held, with respect to Nos. 7893 and 7894, that where the rate for the carriage of a commodity is no more than is just and reasonable for the through service, there is no ground, in the absence of undue prejudice or unjust discrimination, for requiring the performance of a special and expensive service without additional charge; and that the milling-in-transit charge applicable on Montana wheat milled at Great Falls, Mont., for eastern and western terminals was not shown to be unreasonable or unduly prejudicial. No. 7892 and the pertinent portion of the fourth section application were held open for further hearing.

Neither party desired the further hearing contemplated by the Commission, and accordingly, upon petition by complainant, the entire proceeding was reopened and oral argument had. This, of course, added nothing to the evidence of record.

I am of opinion that Nos. 7893 and 7894 were properly disposed of in our original report, and, as there is no additional evidence now before us, am constrained to dissent from any change in our findings. I am unable to subscribe to the doctrine apparently underlying the majority report, i. e., that the carriers have open to them the recourse of increasing the line-haul rate charged all shippers, including those who have no occasion to use a transit service, simply in order that one or more interior millers, who are not interested in the amount of the freight rate proper, may secure the transit service at a rate lower than we would feel justified in prescribing.

With respect to No. 7892, the present record is not, in my judgment, sufficiently comprehensive to warrant us in holding that defendant's charges are unduly prejudicial or unreasonable for the service performed, or that its failure to accord transit at Great Falls on shipments of wheat from points in Montana to destinations in North Dakota is unreasonable or unduly prejudicial to complainant or to Great Falls.

The comparative transportation conditions surrounding shipments to eastern terminals and to North Dakota points are not disclosed. It does appear, however, from complainant's evidence that the average loading of flour to the former was 46,583 pounds per car, while to North Dakota destinations the average loading was 39,773 pounds.

There is little of record to show the availability of North Dakota as a market for complainant's flour. It was testified for complainant that the first natural market for Montana flour is Montana, and that markets for the surplus must be found on the Pacific coast and in the densely populated states of the east. Complainant concedes

that it is under a commercial handicap in disposing of its flour, and it is not shown that the failure to make more shipments to North Dakota is due to the rate adjustment rather than to commercial conditions.

While not necessarily controlling, it is material, in considering a proposal to disrupt the existing adjustment, to ascertain the situation with respect to other Montana mills. Neither these nor millers operating in North Dakota or Minneapolis were represented at the hearing. The record does not disclose whether or not defendant accords other millers in Montana transit on shipments to destinations intermediate to eastern terminals. In this case we have before us as complainant one miller operating one mill, and as defendant one carrier.

Comparatively little evidence as to the reasonableness of the aggregate charges was introduced by complainant. Counsel for defendant stated that he had not considered the line-haul rates in issue and that he was not prepared to introduce evidence in respect thereof.

This is an exceedingly practical question and should, in my opinion, be disposed of on the facts presented in each case, and not upon any theory of equalization of milling points. We have consistently refused to require the establishment or extension of transit except where necessary to remove unlawful discrimination. *Schmidt & Sons v. M. C. R. R.*, 19 I. C. C., 535, 537; *National Casket Co. v. S. Ry. Co.*, 31 I. C. C., 678, 697; *Middletown Car Co. v. P. R. R. Co.*, 32 I. C. C., 185, 186. Whatever might be proper upon a more comprehensive record, I do not believe that the evidence before us warrants a departure from the general principles heretofore followed by us. The complaints should be dismissed.

The question of whether or not a departure from the long-and-short-haul rule of the fourth section is presented is purely one of law. The only theory upon which the transit practice is justified is that a commodity is sent from point of origin to destination as a through shipment, which may be subjected to some process at an intermediate point.

It appears that complainant here attempts to compare a through movement with two separate local movements. In this connection it may be remarked that the majority report in stating that—

The fourth section violation here involved arises from the fact that the charges on shipments of wheat from Montana points milled in transit at Great Falls and destined to points in North Dakota intermediate to the eastern terminals are higher than the charges on shipments of wheat from the same points of origin milled in transit at Great Falls and destined to eastern terminals.

and that—

the fourth section is violated if the application of a local rate on a shipment from the same point of origin as that on which a proportional rate would apply

results in a higher through charge to an intermediate point than to a more distant point, and that is the situation here involved.

assumes as facts the very matters in issue. The wheat ultimately shipped as flour to North Dakota points is not "milled in transit" within the usual meaning of that term, and the aggregate charges assessed can not properly be called a "through charge." There are through rates on wheat from points in Montana on the Great Northern to destinations in North Dakota on that line; and there are rates on wheat from points in Montana to Great Falls, and on flour from Great Falls to destinations in North Dakota. But there are no rates applicable on "shipments of wheat from Montana points milled in transit at Great Falls and destined to points in North Dakota." We have consistently held "that in determining questions under section 4, rates of the same kind must be compared with one another." *Baltimore Chamber of Commerce v. B. & O. R. R. Co.*, 22 I. C. C., 596, 601; *Southern Illinois Millers Asso. v. L. & N. R. R. Co.*, 23 I. C. C., 672, 674; *Conf. Ruling 304a*.

The following may be given as the simplest example of some of the results that follow sustaining complainant's contention:

A ——— B ——— C ——— D

The rate from A to D, under which wheat may be milled at B, is 15 cents. There is a local rate on wheat from A to B of 8 cents, and a local rate on flour from B to C of 6 cents. Two shipments of wheat, X and Y, leave A on the same day and reach B on the same day. While being milled at B, the local wheat rate from A to B is reduced to 6 cents and the local flour rate from B to C is increased to 8 cents. X and Y, milled into flour, leave B on the same day. X moves to D on the balance of the 15-cent through rate. Y moves to C on the local rate in effect when it leaves B, 8 cents. The result is that 15 cents is paid on X from A to D, and 16 cents on Y from A to C, both milled at B. Under the complainant's contention this would be a fourth section violation although at no time has the combination of the wheat rate to B plus the flour rate to C exceeded 14 cents, i. e., 8 cents to B, plus 6 cents to C when Y left A, and 6 cents to B, plus 8 cents to C when Y left B; and the through rate from A to D has continued to be 15 cents.

The complications if X and Y are milled between A and C, but at different points would be even more confusing. As we said in *Mixed Car Dealers' Asso. v. D., L. & W. R. R. Co.*, 33 I. C. C., 133, 138:

There is no provision of the act, and no rule of the Commission, which prescribes what rate shall apply on a combination of commodities made in course of transportation.



Again, assume that there is a through rate of 15 cents on wheat from A to D on which milling in transit is permitted at B, a rate of 4 cents on wheat from A to B and a rate of 10 cents on flour from B to C. As in the other illustration, shipments of wheat move on the same day from A to B and are there milled into flour. While at B, a general rate increase of 15 per cent is permitted by the Commission. When reshipped from B the shipment from A to D takes the balance of the through rate of 15 cents in effect when it left point of origin while the flour destined to C takes the flour rate of 11.5 cents in effect when it leaves B, thus paying an aggregate charge from A to C of 15.5 cents. Under complainant's contention this situation would present a violation of the fourth section.

The practical effect of adopting this view would be to prevent the carrier from increasing its flour rate from B to C 15 per cent, and thus receiving the benefit from the permission granted, without violating the fourth section if any wheat that had originated at A was still at B to be milled and shipped to C as flour. If the carriers ascertained that a shipper had some wheat from A that was being milled at B and, on the shipper's assurance that the flour would be consumed at B, published the rates found reasonable by the Commission, the shipper by changing his mind and sending the flour to C could make the carrier violate the fourth section.

Surely we should hesitate before sponsoring a doctrine capable of such results. As a matter of fact, in both illustrations facts most favorable to the complainant's theory have been assumed. That is, it has been assumed that the shipment of flour from B to C could be connected with a corresponding inbound movement of wheat from A to B. In practice this is not true as to the shipments to North Dakota.

Under defendant's tariff rules governing transit on its line, the service is restricted to shipments moving from the transit point within one year from the date of the freight bill covering the inbound shipment; freight bills on which the transit privilege is desired must be presented to the carrier for recording within 30 days from date of issue, and transit will be granted only on the actual weight of the inbound movement. These and other rules govern and determine the applicability of the through rate under which the "rate from the transit station to transit destination will be the difference between the rate collected to the transit station and the rate point of origin to transit destination, in force on date of shipment from point of origin, as shown on freight bill surrendered, plus additional charge, if any, for additional service or out of line haul, as authorized in published tariffs which are lawfully on file with the Interstate Commerce Commission."

There are no similar restrictions on the rate applicable to shipments of flour from Great Falls to destinations in North Dakota. Without wishing to be technical, attention might be directed to the fact that under the terms of section 4 there has been an actual violation of that section only when the carrier has charged and received a greater compensation in the aggregate for the transportation for a shorter than for a longer distance over the same line or route, that is, when it can be shown that shipments have moved. Even if it could be assumed that the situation conceived by complainant would constitute a fourth section violation, there is no evidence that a shipment of wheat moved from a given point in Montana, was milled at Great Falls, and moved as flour to a destination in North Dakota intermediate to the eastern terminals. It is almost inconceivable that there could be such evidence. In permitting transit under any conditions a great deal must be assumed, but at least we have published tariff rules for the determination of the applicability of the through rate. I am unwilling to go further and assume the unassumable, namely, that a particular shipment of flour from Great Falls to a destination in North Dakota can be identified with a corresponding shipment of wheat from a point in Montana for the purpose of showing that the fourth section has been violated. To my mind it is but one more illustration of the fact that complainant is attempting to compare rates that are not comparable.

The shipments to Minneapolis move on through rates, those to North Dakota on local rates. Payment of the wheat rate into Great Falls entails no obligation to ship the product to any given destination; and the rate upon the flour shipped thence to North Dakota points is in no wise conditioned upon or connected with a previous rail movement to Great Falls. The movement of wheat to Great Falls and of flour from Great Falls to North Dakota are separate and distinct movements and, from the standpoint of rates, have no connection. The facts in the *Duncan Case, United States v. Louis. & Nash. R. R.*, 235 U. S., 314, relied on by the majority, are not similar to those here presented. In my opinion no violation of the fourth section is shown.

HARLAN, *Commissioner*, also dissents.

47 I. C. C.



No. 9322.  
F. S. HARMON & COMPANY  
v.  
NEW YORK CENTRAL RAILROAD COMPANY ET AL.

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*Submitted April 12, 1917. Decided November 14, 1917.*

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Rate on metal extension curtain rods, in less than carloads, from Ogdensburg, N. Y., to Tacoma, Wash., found to have been unreasonable. Reparation awarded.

*E. L. Porter* for complainant.

*A. B. Cade* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in manufacturing and jobbing furniture and house furnishings at Tacoma, Wash. By complaint, filed November 20, 1916, it alleges that the first-class rate of \$3.70 per 100 pounds charged by defendants on a less-than-carload shipment of metal extension curtain rods from Ogdensburg, N. Y., to Tacoma, February 16, 1916, was unreasonable. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipment consisted of solid steel rods, brass washed, each fitted into an open seam steel tube, also brass washed, with and without solid steel knobs at the ends, and open seam steel tubes, brass washed, each fitted into a similar tube, slightly larger in diameter, with hollow knobs at the ends. The rods were packed in boxes. The shipment moved over the New York Central Railroad and Chicago, Milwaukee & St. Paul Railway. It weighed 3,010 pounds and charges were collected thereon in the sum of \$111.37 at the legally applicable first-class rate of \$3.70, governed by the western classification. Complainant contends that the rate assessed was unreasonable to the extent that it exceeded \$1.50.

Complainant cited an any-quantity commodity rate of \$1.50 applicable at the time the shipment moved on various articles of hardware and mechanic's tools from Ogdensburg and other eastern points to Tacoma. A commodity rate of \$1.10, minimum 30,000 pounds, was and is applicable on window shade materials and fixtures, including curtain poles, in straight or mixed carloads. On May 5, 1916, de-

defendants established a less-than-carload commodity rate of \$2 on metal curtain poles from Ogdensburg and other eastern points to Tacoma, which is still in effect and which complainant admits is a reasonable rate under present conditions.

Prior to this movement complainant made shipments of similar articles over the water route from New York to Tacoma at rates of from 75 cents to \$1. The withdrawal of vessels from that service necessitated the forwarding of this shipment by rail. For complainant it was stated that it received from 80,000 to 100,000 pounds of curtain rods per year and that it invariably ships by water when such service is available.

On behalf of defendants it was asserted that the \$1.50 rate on hardware and mechanic's tools, cited by complainant, was low and water compelled, there being a heavy movement of those commodities by water from the Atlantic seaboard to the Pacific coast. On April 16, 1917, this rate was increased to \$1.75, the present rate.

We find that the rate assailed was unreasonable to the extent that it exceeded \$2 per 100 pounds; that complainant made the above-described shipment and paid and bore the charges thereon at the rate herein found unreasonable; that it was damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$51.17, with interest.

An order awarding reparation will be entered, but as the rate herein found reasonable has been in effect for more than a year, no order for the future is necessary.

No. 7110.  
SIOUX CITY LIVE STOCK EXCHANGE  
v.  
CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA  
RAILWAY COMPANY ET AL.

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*Submitted January 15, 1917. Decided November 13, 1917.*

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Rules governing the free transportation of caretakers accompanying carload shipments of live stock from points in southwestern Minnesota to Sioux City, Iowa, found unduly prejudicial in comparison with the rules governing from the same points of origin to St. Paul on traffic to South St. Paul, Minn. Undue prejudice ordered removed.

*C. E. Childe* for complainant.

*Richard L. Kennedy* and *John F. Finerty* for Chicago, St. Paul, Minneapolis & Omaha Railway Company, and Great Northern Railway Company.

*A. F. Stryker* for intervener.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

We found in our original report, 40 I. C. C., 418, that defendants' rates on live stock from specified points in southwestern Minnesota and a few points in southeastern South Dakota to Sioux City, Iowa, were not shown to be unreasonable or unjustly discriminatory, but that the evidence tended to support complainant's contention that defendants' rules governing the granting of free transportation to caretakers of live stock between the points in question were unduly prejudicial in comparison with the rules governing from the same points of origin to St. Paul, Minn., on traffic to South St. Paul, Minn. Owing to the absence of sufficient evidence upon which to base a finding as to what would be a proper rule the case was assigned for further hearing on that question. The South Omaha Live Stock Exchange of Omaha, Nebr., intervened and contends that were the relief which is prayed for by complainant granted to Sioux City it would discriminate against the live-stock market of South Omaha unless the same relief were granted the latter point. No evidence, however, was introduced by the intervener.

The points of origin are located on the Chicago, St. Paul, Minneapolis & Omaha Railway, hereinafter called the Omaha, from Man-  
47 I. C. C.

kato to Bigelow, Minn., inclusive, and branch-line points in Minnesota between those points, and on the Great Northern Railway, from Willmar to Hills, Minn., inclusive, including Sherman, Garretson, and Booge, S. Dak. The territory served by the Omaha is substantially equidistant from Sioux City and South St. Paul, while the territory served by the Great Northern is slightly nearer to Sioux City than to South St. Paul.

It was shown in our original report that both Sioux City and South St. Paul draw live stock from the originating territory described, and that a difference of \$2 or \$3 in the charges on carload shipments is sufficient to divert live stock from one market to the other. Instances are cited where live-stock shippers of Minnesota forward their single carload shipments to St. Paul in preference to sending them to Sioux City when the market prices at those points are substantially on a parity, because of the free return transportation of caretakers from St. Paul, and it is stated that in general the liberality of the Minnesota state rules governing the free transportation of caretakers of live stock is a great factor in turning shipments to St. Paul rather than to Sioux City. Defendants' rules for shipments to Sioux City are substantially as follows:

Number of carloads of cattle, hogs, or sheep:	Free transportation.
1.....	1 caretaker one way.
2 to 5.....	1 caretaker each way.
6 to 10.....	2 caretakers each way.
11 or more.....	3 caretakers each way.

The rules prescribed by the Minnesota state law for shipments from the Minnesota points in question to St. Paul, in substance are:

Number of carloads of live stock:	Free transportation.
1 to 4.....	1 caretaker each way.
5 to 8.....	2 caretakers each way.
9 to 12.....	3 caretakers each way.
Each additional 4 carloads.....	1 additional caretaker each way.

The rules which govern to Sioux City apply in connection with interstate shipments of live stock in the general territory concerned, while rules substantially the same as those applying to St. Paul are in effect on intrastate shipments between all points in Minnesota, Missouri, Nebraska, and between certain points in Wisconsin. For complainant it was asserted that 85 per cent of the shipments of live stock from the territory in question to Sioux City or South St. Paul consists of one-carload shipments and that caretakers of one carload of cattle, sheep, or hogs from this territory to Sioux City are granted free transportation to Sioux City but are required to pay their return fares, which range from \$1.70 to \$3.72 to points on the Omaha and from \$1.67 to \$4.68 to points on the Great Northern. These fares

have since been increased following *Western Passenger Fares*, 37 I. C. C., 1. Caretakers of one carload of any kind of live stock shipped to South St. Paul from the same territory obtain free transportation to St. Paul and return, but no free transportation is granted from St. Paul to South St. Paul by the St. Paul Bridge & Terminal Railway, the switching line. It is also shown that no free transportation is granted by the switching line at Sioux City from the defendants' tracks to the stockyards at that point. The undue advantage alleged to exist on traffic to South St. Paul as a result of the rules governing the free transportation of caretakers to and from St. Paul could therefore be removed by defendants. Since our original report the Great Northern has published from the South Dakota points to St. Paul the same rules as apply to Sioux City. This removed the undue prejudice with respect to those points, but as the rules from Manley and Hills, Minn., to St. Paul were not similarly modified, unlawful departures from the long-and-short-haul rule of the fourth section were thereby created.

We find that the rules of defendants governing fares for the transportation to and from Sioux City of caretakers of carloads of live stock from the points in question in Minnesota in so far as they differ from those contemporaneously maintained by defendants for such transportation to and from St. Paul, in connection with carload shipments of live stock to South St. Paul from the same points of origin in Minnesota result in undue prejudice to Sioux City which defendants will be required to remove.

An appropriate order will be entered.

COMMISSIONERS AITCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.

47 I. C. C.

No. 9253.  
STONEGA COKE & COAL COMPANY, INCORPORATED,  
ET AL.  
v.  
LOUISVILLE & NASHVILLE RAILROAD COMPANY  
ET AL.

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*Submitted May 3, 1917. Decided November 21, 1917.*

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Through routes and joint rates on coke in carloads required to be established and maintained from Stonega, Osaka, Glamorgan, Esserville, and Dorchester, Va., to destinations in Alabama, Florida, Georgia, Kentucky, Louisiana, South Carolina, and Tennessee, not to exceed joint rates contemporaneously in effect from Appalachia, Blackwood, Josephine, and Norton, Va.

*J. F. Bullitt and Wm. A. Glasgow, jr., for complainants.*

*John B. Daish and R. S. Graham for Wise Coal & Coke Company.*

*William A. Northcutt and William Burger for Louisville & Nashville Railroad Company.*

REPORT OF THE COMMISSION.

**McCHORD, Commissioner:**

In the first decision in *Stonega Coke & Coal Co. v. L. & N. R. R. Co.*, 23 I. C. C., 17, hereafter referred to as the *Stonega Case*, we said, at page 24:

The fact that the Louisville & Nashville maintains rates from points on its own line on a lower basis than rates in force from points served by other railroads, and which are not on its own line, if discrimination at all, is not, in our judgment, the character of discrimination which the statute condemns as undue or unreasonable.

In the second decision in the *Stonega Case*, 39 I. C. C., 523, we ordered the Louisville & Nashville Railroad and the other defendants in the consolidated proceedings there reported to establish, maintain, and apply rates on coke from Stonega, Va., and other operations on the Interstate Railroad which should not exceed the rates contemporaneously in effect from Appalachia, Va., to the northern destination points involved in those proceedings; in brief, we found that the Appalachia group rate should be applied from operations on the Interstate Railroad.

The present proceeding is in effect supplementary to the *Stonega Case*. Complainants have coking operations at Stonega, Osaka,

Glamorgan, Esserville, and Dorchester, all located on the Interstate Railroad, the main line of which extends from Stonega to Appalachia, Va., where it connects with the Louisville & Nashville. It also connects with the Louisville & Nashville at Dorchester Junction and Norton, Va. The rate of the Interstate Railroad from these operations to the junctions with the Louisville & Nashville is 10 cents per ton. Complainants seek the establishment of through routes on coke, in carloads, from their ovens on the line of the Interstate Railroad, via the Louisville & Nashville, to destinations in Alabama, Florida, Georgia, Kentucky, Louisiana, South Carolina, and Tennessee specified in Louisville & Nashville Railroad Company's tariff L. C. C. A-12024, with joint rates applicable thereto not to exceed the present joint rates on coke to the same destinations from Appalachia, Blackwood, Josephine, and Norton, Va., where coking operations are located contiguous to the line of the Louisville & Nashville.

Complainants are not primarily interested in the amount of the joint rates. They desire to be placed on a rate parity with their competitors located at Appalachia, Blackwood, Josephine, and Norton, and whether that result be accomplished by increasing the joint rates to the combination bases or by extending the junction point rates back to their ovens is immaterial to them.

We adjudged the Interstate Railroad to be a common carrier subject to the act to regulate commerce in the decision in the first *Stonega Case*, and in the second decision fixed its division of the joint rates on coke applicable from complainants' ovens to points in Kentucky, Ohio, and other states at 18 cents per ton.

The Louisville & Nashville, the only defendant represented at the hearing, defends its neglect and refusal to establish joint rates on the ground that to charge complainants for the hauls from the junctions of delivery to them the same rate as is charged other shippers of coke at and in the vicinity of the interchange junctions with the Interstate Railroad does not result in any undue preference in violation of the act, and that the finding quoted from the first decision in the *Stonega Case* was legally correct. Or, in other words, it is the contention of the Louisville & Nashville that inasmuch as the coking operations at points contiguous to its rails employ their own facilities in the placement of empty cars at the ovens and the placement of the loaded cars on the interchange tracks, while the complainants employ the agency of the Interstate Railroad, it is but doing what the law directs in charging all the operations the same rate from its junction for the identical service it performs for all. We have reviewed the arguments made by the Louisville & Nashville, but are not persuaded thereby that it was not just and reasonable to establish in the second decision in the *Stonega Case* a single group of ori-



gin from these producing points. There is nothing in the record to suggest that there is any circumstance or condition in the transportation of coke to the south, as compared with the transportation of the same commodity to the north, which requires that the originating territory should be differently grouped. We are, therefore, of the opinion and find that the defendants herein should establish and maintain for the transportation of coke, in carloads, through routes from Stonega, Osaka, Glamorgan, Esserville, and Dorchester to the destinations specified in Louisville & Nashville Railroad Company's tariff I. C. C. A-12024, applicable via the Interstate Railroad to its junctions with the Louisville & Nashville Railroad, thence via the same routing as is now in effect from such junction points, and, for application thereto, just and reasonable joint rates which shall not exceed the joint rates contemporaneously applicable to the same destination points from Appalachia, Blackwood, Josephine, and Norton.

An order will be entered accordingly.

COMMISSIONERS AITCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.

47 I. C. C.

**INVESTIGATION AND SUSPENSION DOCKET No. 1084.**  
**CANNED GOODS FROM SAN FRANCISCO, CAL.**

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*Submitted July 16, 1917. Decided November 21, 1917.*

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Proposed increased proportional rates on canned goods originating at interior points in California, applicable to transportation by water from San Francisco, Cal., to Portland and Astoria, Oreg., found justified. Proposed increased minimum applicable to the same transportation found justified in part.

*W. D. Wall* for protestant.

*J. L. Blair* for San Francisco & Portland Steamship Company.

*H. A. Jackson* and *McLean Minor* for Great Northern Pacific Steamship Company.

*Elmer Westlake* for Southern Pacific Company.

**REPORT OF THE COMMISSION.**

**McCHORD, Commissioner:**

In this proceeding proposed increased proportional rates on canned goods, and a proposed increased minimum published by water carriers to apply from San Francisco, Cal., to Portland and Astoria, Oreg., are before us. These schedules were intended to apply to traffic originating at interior California points and were published by Great Northern Pacific Steamship Company and the San Francisco & Portland Steamship Company, hereinafter called the respondents, to become effective May 1, 1917. On protest by the San Jose Chamber of Commerce, the operation of the schedules was suspended until February 28, 1918. Rates are stated in cents per 100 pounds.

The present rates apply on traffic originating in two groups. A rate of 12½ cents is applicable to traffic originating at points adjacent to San Francisco, while from points outside of this group a rate of 10 cents applies. By the schedules under suspension it is proposed to increase these group rates to 15 cents and 12½ cents, respectively, except that certain changes are proposed to be made which would result in an enlargement of the group adjacent to San Francisco. This readjustment of the groups was found upon further investigation by the San Jose protestant not to result in undue prejudice to that point. The present minimum is 30,000 pounds, which by the tariffs under suspension it is proposed to increase to 40,000 pounds. As separately published by the respondents, however, the changes

proposed were not entirely clear, and to this fact is largely due the charge of discrimination against San Jose.

At the hearing the protest was withdrawn, and respondents and protestant agreed that the proposed increased rates should become effective and that the minimum should be 36,000 pounds. As now revised the 12½-cent group will apply to traffic originating north or east of Davis, and north, east, or south of Tracy, Lathrop, or Stockton, and the 15-cent group at all other points.

In justification of the proposed increased rates it was stated that the minimum on canned goods from California points to San Francisco, applicable on interstate shipments, is 36,000 pounds; that the respondents have been and are operating at a substantial loss; that they have increased practically all their commodity rates other than these; that under the proposed schedules the through rates via rail and water will be substantially lower than the all-rail rates; that the recent advances in costs of labor and supplies make some increase in revenue imperative; and that, based on the traffic reasonably to be expected, the increases which have been made and are here proposed will not offset current losses in operation. The differential of 2.5 cents between the two originating groups is explained as resulting from competition via all-rail routes.

Upon all the facts of record we are of the opinion and find that the proposed increased proportional rates have been justified and that the proposed minimum is unreasonable to the extent that it exceeds 36,000 pounds. The respondents may establish, on not less than five days' notice, proportional rates and a minimum not in excess of 36,000 pounds in accordance with this finding. In publishing new schedules they will be expected to make the application of the rates to traffic from points of origin sufficiently specific to avoid misunderstanding. An appropriate order will be entered.

COMMISSIONERS ATTCHISON and ANDERSON did not participate in the disposition of this case.

No. 9131.

**DIMMITT-CAUDLE-SMITH LIVE STOCK COMMISSION  
COMPANY ET AL.**

*v.*

**CHICAGO, BURLINGTON & QUINCY RAILROAD  
COMPANY ET AL.**

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*Submitted May 21, 1917. Decided November 12, 1917.*

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1. Rates on live stock in carloads from points in the state of Missouri to East St. Louis and National Stock Yards, Ill., found to be unjust and unreasonable in so far as they exceed the scale of maximum rates prescribed herein.
2. The present relation of the interstate rates to East St. Louis and National Stock Yards, on the one hand, and the intrastate rates to St. Louis, on the other, found to subject East St. Louis and National Stock Yards to undue prejudice and disadvantage in favor of St. Louis.
3. The application of a different rule governing the return transportation of caretakers in connection with the intrastate rates to St. Louis than in connection with the interstate rates to East St. Louis and National Stock Yards found to subject East St. Louis and National Stock Yards to undue prejudice and disadvantage.
4. Defendants ordered to establish just and reasonable rates prescribed as maxima to East St. Louis and National Stock Yards, and to cease and desist from subjecting said points to the undue prejudice and disadvantage in favor of St. Louis.

*Thomas L. Phillips* for complainants.

*C. B. Bee* for Public Service Commission of Missouri.

*C. S. Burg* for Missouri, Kansas & Texas Railway Company and its receiver.

*H. G. Herbel* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company and their receiver.

*R. B. Scott* and *C. E. Spens* for Chicago, Burlington & Quincy Railroad Company.

*Thomas Bond* for St. Louis-San Francisco Railway Company.

*N. S. Brown* for Wabash Railway Company.

*Silas H. Strawn* for Chicago & Alton Railroad Company.

*W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company.

*F. M. Nase* for St. Louis & Hannibal Railway Company.

## REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

Prior to about July 12, 1913, the rates on live stock, in carloads, from points in the state of Missouri to St. Louis, Mo., on the one hand, and East St. Louis and National Stock Yards, Ill., on the other, were by any particular line the same from points over 200 miles distant and approximately the same from points between 100 and 200 miles distant, although not the same from points within an average radius of approximately 100 miles, from which latter points the rates to East St. Louis were higher than the rates to St. Louis. On or about the above date the railroads, in obedience to an act of the general assembly of Missouri, reduced the rates from practically all points in the state to St. Louis. No changes were made in the rates to East St. Louis, nor to St. Louis applicable on interstate traffic. The reductions in the intrastate rates had the effect of widening the differences between the rates to St. Louis and East St. Louis, and of creating differences where none had before existed, thereby disturbing a long-established adjustment.

## THE PARTIES AND ISSUES.

On August 21, 1916, the resulting adjustment was attacked in this case. The original complaint and a supplemental complaint were filed by the live-stock dealers, Live Stock Exchange, and Association of Commerce of East St. Louis, and name as defendants 21 railroads participating in the movement of live stock from points in Missouri to St. Louis and East St. Louis. The original complaint alleges that the rates on live stock, including horses and mules, cattle and calves, hogs and sheep, from all points in Missouri to East St. Louis are unjust and unreasonable, in violation of section 1 of the act to regulate commerce, and unjustly discriminatory and unduly prejudicial, in violation of sections 2 and 3. The supplemental complaint makes the same charge of undue prejudice against certain incidents of the rates in respect to minimum carload weights, mixed carload shipments, and the return transportation of caretakers. We are asked to prescribe rates, rules, and regulations to East St. Louis which will be just and reasonable and "free from undue and unreasonable prejudice, disadvantage, and discrimination." It is prayed that the rates may be no higher than, and the rules and regulations no different from, those contemporaneously applied from the same points to St. Louis.

In separate answers to the original complaint defendants deny that the rates attacked violate section 1 or section 2, but neither admit nor deny that they violate section 3. They aver that the Missouri

statutory intrastate rates were published by them under protest and in obedience to the act of the general assembly of Missouri above referred to; that the intrastate rates were attacked as confiscatory in the United States district court and an injunction secured against their application, but upon appeal the Supreme Court of the United States held the proof insufficient to support the judgment of the lower court; that they did not apply the same rates to East St. Louis for the reason that the intrastate rates are unreasonably low; that they applied to the Public Service Commission of Missouri for, and were granted, an increase in the intrastate rates, but the increased rates granted were held in abeyance by a *certiorari* proceeding in the supreme court of Missouri; and that if the discrimination complained of existed, it resulted from the act of the general assembly of Missouri which required the maintenance of the intrastate rates. In a joint answer to the supplemental complaint defendants neither admit nor deny that the incidents of the rates above referred to are productive of undue prejudice to East St. Louis, but aver that if any such discrimination exists, it resulted from the acts of the general assembly of Missouri.

No parties directly interested in the rates, rules, and regulations applicable to St. Louis intervened, but the traffic commissioner of the Business Men's League of St. Louis appeared as a witness for complainants, and testified that St. Louis and East St. Louis should be regarded as one commercial community, and that the rates on live stock from points in Missouri to St. Louis and East St. Louis should be the same, particularly from points beyond a radius of 100 miles. The Public Service Commission of Missouri was represented at the hearing by its chief rate expert, who took an active part in the proceedings. The general position of that commission is that, while the rates prescribed by the general assembly were too low, the interstate rates to St. Louis and East St. Louis are too high.

It appeared at the hearing that the Terminal Railroad Association of St. Louis and its various subsidiary companies, the St. Louis Merchants Bridge Terminal Railway Company, Wiggins Ferry Company, St. Louis Transfer Railway Company, and East St. Louis Connecting Railway Company, are the delivering agents of most of the defendant carriers on shipments to the stockyards and packing houses in both St. Louis and East St. Louis. These terminal carriers were not included as defendants in the complaint, but were represented at the hearing by counsel, waived notice, and were made parties defendant.

On April 3, 1917, the supreme court of Missouri handed down its decision in the *certiorari* proceeding which had held in abeyance the increased state rates prescribed by the public service commission.

*State ex rel. Rhodes v. Public Service Commission of Missouri*, 194 S. W. Rep., 287. The only question raised in that proceeding was the power of the public service commission to prescribe rates in excess of the maximum standard previously fixed by the general assembly, and the court held that the commission had that power. The effect of the decision was to make effective the rates prescribed by the public service commission. Thereupon the carriers, including the defendants herein, filed tariffs increasing the state rates to the basis of the new standard. These tariffs became effective July 15, 1917. The new rates are in cents per 100 pounds, are subject to approximately the same carload minima and to the same rule regarding mixed carload shipments as the interstate rates to East St. Louis, and are higher on the whole than the former statutory rates to St. Louis. They are considerably lower, however, than the rates to East St. Louis, or to St. Louis applicable on interstate traffic. As the complaint in the present case is directed against the reasonableness *per se* of the rates to East St. Louis and against the maintenance of any difference between the rates and rules to St. Louis and East St. Louis, it has not been satisfied by the publication of the rates and rules prescribed by the public service commission.

#### THE LIVE-STOCK MARKETS AT EAST ST. LOUIS AND ST. LOUIS.

East St. Louis is one of the leading markets for live stock in the country. There are located here the stockyards of the St. Louis National Stock Yards Company, which was incorporated in 1873. In close proximity to the stockyards are four large and several smaller packing houses. The market is provided through the medium of the Live Stock Exchange, a voluntary organization of 147 individuals, comprising 38 commission firms, engaged in buying and selling live stock on commission. These commission firms solicit the farmers and shippers to send their stock to the East St. Louis market, where it may be purchased by local packers, or by buyers representing eastern packers, or by others for reshipment to the country for further feeding. At East St. Louis, an important branch of the business is the filling of orders for the eastern trade. As the freight rates from St. Louis and East St. Louis to eastern markets are the same, any difference in the inbound rates in favor of St. Louis has a tendency to cause the buyers for eastern packers to purchase their supplies in that market rather than in East St. Louis. The normal movement of live stock is from the west to the east, and East St. Louis draws stock from all states west of the Mississippi River to the Rocky Mountains, and from the southern boundary of Minnesota to the Gulf of Mexico. It also draws some



stock from east of the Mississippi River. During the four years ended 1915 over 47 per cent of the live stock marketed at East St. Louis came from Missouri.

St. Louis is also an important live-stock market. There are located here the stockyards of the St. Louis Independent Stock Yards Company and seven packing houses, two of which compare favorably in size with those located in East St. Louis. Operating here also are numerous commission firms buying and selling live stock on commission. These commission firms compete actively with the commission firms operating in East St. Louis. This competition is especially keen for Missouri shipments. The record indicates that under equal rate conditions the farmers and shippers prefer the East St. Louis market over the St. Louis market for the reason that East St. Louis has more commission firms and buyers to bid for the stock than has St. Louis.

The larger packers at both St. Louis and East St. Louis purchase a great many head of live stock, especially hogs, at the Missouri River markets and at interior points in Missouri. This stock is shipped direct to the packing houses. The rates on packing-house products from St. Louis and East St. Louis to the large consuming markets in the east are the same, consequently any difference in favor of St. Louis over East St. Louis in the inbound rates on the live animals is an advantage to the St. Louis packer and a corresponding disadvantage to his East St. Louis competitors.

RECEIPTS OF LIVE STOCK AT EAST ST. LOUIS AND ST. LOUIS.

The receipts of live stock at the East St. Louis stockyards from points in Missouri are shown in the following table for the calendar years indicated:

Number of head received.

	Horses; mules.	Cattle.	Hogs.	Sheep.	All stock.
1912-13.....	155,590	829,972	2,681,713	1,126,037	4,793,312
1914-15.....	121,758	716,109	2,518,851	690,374	4,047,092
Decrease.....	33,832	113,863	162,862	435,663	746,220

No official record is kept of the receipts of live stock at St. Louis. Complainants requested defendants to compile statements of the receipts from points on their respective lines in Missouri and six of them complied with the request. The statements furnished are not for uniform periods, so it is rather difficult to make any general com-

parisons. The figures are for the years ended June 30, and are as follows:

*Number of cars received.*

	Horses; mules.	Cattle.	Hogs.	Sheep.	Mixed.	Total.
<b>Missouri, Kansas &amp; Texas:</b>						
1911-1913.....	43	10	440	1	( )	494
1914-1916.....	82	29	958	15	( )	1,084
Increase.....	39	19	518	14	.....	500
<b>St. Louis-San Francisco:</b>						
1911-1913.....	169	600	871	143	( )	1,863
1914-1916.....	233	1,050	1,175	156	( )	2,614
Increase.....	64	381	304	13	.....	763
<b>Wabash:</b>						
1910-1912.....	434	1,346	2,712	591	2	5,085
1913-1915.....	580	1,351	4,630	508	48	7,117
Increase.....	146	5	1,918	* 83	46	2,032
<b>Chicago, Rock Island &amp; Pacific (stations east of Kansas City):</b>						
1914.....	10	29	104	4	73	220
1915.....	3	21	169	5	158	356
1916.....	8	30	156	13	258	465
Increase (1916 over 1914) .....	* 2	1	52	9	185	245
<b>Missouri Pacific:</b>						
1914.....	14	230	350	32	206	832
1915.....	15	80	1,109	34	215	1,453
1916.....	11	100	1,800	15	261	2,286
Increase (1916 over 1914) .....	* 3	- * 61	1,450	* 17	55	1,424
<b>Chicago, Burlington &amp; Quincy:</b>						
1911-1913.....	667	1,130	4,487	288	1	6,573
1914-1916.....	91	429	6,089	243	1	6,853
Increase.....	* 576	* 701	1,602	* 45	.....	379

\* Not reported.

\* Decrease.

A comparison of the two tables strongly indicates that something has retarded the movement of Missouri live stock to East St. Louis and encouraged its movement to St. Louis.

**CAUSE OF DECREASING RECEIPTS OF MISSOURI LIVE STOCK AT EAST ST. LOUIS.**

Adequate expedited train service is an important factor in the movement of live stock to market. The live-stock trains from Missouri points are scheduled to arrive in St. Louis late in the afternoon, during the night, and early in the morning. The cars are delivered to the unloading chutes at St. Louis and East St. Louis at about the same time, i. e., before the opening of the day's market. The train service to these two markets has been improved in late years. The decrease in Missouri receipts at East St. Louis can not be attributed to this factor.

The commissions charged by the live-stock dealers for selling live stock on the East St. Louis market were increased in 1912. Live

stock is sold by the carload, and the increase in commissions was made on account of the increased size of the cars generally used by the shippers. A large percentage of the shipments to St. Louis market go to the two larger packing houses and no commissions are paid on that live stock at destination. The record does not indicate that the increased commissions charged at East St. Louis have operated to prejudice materially the movement of live stock to that market.

Some reference was made to the possible effect of adverse crop conditions on the movement of live stock. It does not appear, however, that such conditions have affected the receipts at East St. Louis in any different way or to any greater extent than the receipts at other markets.

The subjoined table shows the average rates in blocks of 25 miles from representative points in Missouri on the Chicago, Burlington & Quincy; Missouri Pacific; St. Louis, Iron Mountain & Southern; Wabash; St. Louis-San Francisco; Missouri, Kansas & Texas; and Chicago, Rock Island & Pacific railways to St. Louis and from the same points to East St. Louis; also the present and former differences in the rates to St. Louis and East St. Louis. The six roads named are representative, having reasonably direct lines to St. Louis and East St. Louis.

Average rates and differences stated in dollars per 36-foot car.

Miles to St. Louis.	Average rates, all live stock.				Average differences East St. Louis over St. Louis, all live stock.		
	East St. Louis.	St. Louis interstate. <sup>1</sup>	St. Louis intrastate. <sup>2</sup>	St. Louis intrastate. <sup>3</sup>	Prior to July 12, 1913.	From July 12, 1913, to July 15, 1917.	After July 15, 1917.
25.....	15.09	11.33	8.90	13.46	3.76	6.29	1.63
50.....	20.22	17.19	13.20	16.75	3.03	7.02	3.47
75.....	22.89	20.89	15.40	19.25	2.00	7.49	3.64
100.....	25.04	23.36	17.60	21.63	1.68	7.44	3.41
125.....	26.88	26.27	19.80	23.20	.61	7.08	3.49
150.....	29.53	28.62	22.00	25.09	.91	7.53	4.53
175.....	31.73	31.18	24.20	26.43	.54	7.52	5.29
200.....	33.94	33.59	26.40	27.86	.35	7.54	6.08
225.....	35.16	35.16	28.60	29.36	.00	6.56	5.80
250.....	37.52	37.52	30.80	30.86	.00	6.72	7.16
275.....	39.69	39.69	33.00	31.92	.00	6.59	7.67
300.....	42.31	42.31	35.20	32.86	.00	7.11	9.45

<sup>1</sup> Approximately same as intrastate rates to St. Louis in effect prior to July 12, 1913.  
<sup>2</sup> Statutory rates in effect from July 12, 1913, to July 15, 1917.  
<sup>3</sup> Public service commission rates in effect after July 15, 1917.

The above table shows that one result of the reduced intrastate rates which became effective in July, 1913, was to widen greatly the differences between the intrastate rates to St. Louis and the interstate rates to East St. Louis. It shows further that the differences which resulted from the public service commission rates, while less than the

preceding differences for distances up to 250 miles, are greater for 250 miles and over, and, with the exception of that for 25 miles, are much greater than the differences which existed prior to July 12, 1913.

Complainants earnestly contend that the presence of the increased differences in rates against East St. Louis has been responsible for the decreased movement of Missouri live stock to that market. To support this contention they introduced eight witnesses. Five live-stock dealers at East St. Louis presented exhibits showing generally that their Missouri business has been steadily declining since July, 1913. They made separate investigations to ascertain the cause of the decline, and traced it to the reduced intrastate rates to St. Louis and to the consequent tendency of the farmers and shippers to ship their stock to that market. In addition to the investigation made by individual members, the Live Stock Exchange of East St. Louis appointed a special committee to ascertain the cause of the decreasing Missouri receipts at East St. Louis. This committee found that the reduction of the intrastate rates to St. Louis in July, 1913, was the cause, and so reported to the exchange.

The testimony of two shippers corroborated that of the dealers. A shipper at Fayette, Mo., stated that, although East St. Louis is the better market under equal rate conditions, the higher freight rates thereto had a tendency to cause the shippers to ship their stock to the St. Louis market. A shipper of Shelby County, Mo., who has been in business for 12 years, testified that prior to 1913 he shipped his stock to the East St. Louis market, but that since 1913 he has shipped almost exclusively to the St. Louis market. He stated that the change in rates to St. Louis caused him to change his shipments to the St. Louis market, although he preferred the East St. Louis market. The stockyards company at East St. Louis has looked into the matter. Its vice president testified that the increased differences in the rates to St. Louis and East St. Louis did not have an immediate effect upon the East St. Louis market, because all the shippers "did not at once awake to the real situation, but after they had become aware of the situation and its possibilities the effect has been felt and is growing." Witnesses for defendants also testified to the effect that the reduced rates to St. Louis diminished the movement of live stock to East St. Louis.

Complainants also contend that certain incidents of the intrastate rates contributed to increase the shipments to St. Louis and to decrease the shipments to East St. Louis. The former statutory rates were on a dollar per car basis, consequently the intrastate shippers loaded the cars shipped to St. Louis to their maximum capacity, and were not required to pay any extra charges for the extra loading. The interstate rates are on a cents per 100 pounds basis, and the

interstate shippers to East St. Louis must therefore pay for any excess loading over the minimum weight. This difference of treatment was discontinued by the public service commission rates which are published in cents per 100 pounds.

The provisions for the free transportation of attendants are more liberal in connection with the intrastate rates than in connection with the interstate rates. On the intrastate rates, one man is passed each way in charge of one carload of all kinds of stock. On the interstate rates one man is passed each way in charge of one carload of horses and mules, but only one way in charge of other one-car shipments. On shipments of two or more cars the intrastate and interstate provisions are the same. Witnesses for complainants testified that this difference had contributed measurably to increase the one-car shipments to St. Louis to the prejudice of East St. Louis.

The intrastate distance rates, whether statutory or commission-made, have been strictly applied by the carriers. As a result the short-line carriers have transported practically all the traffic from competitive points and competitive sections. The experience of the Chicago & Alton Railroad will serve to illustrate this result. The main line of this railroad traverses the state of Missouri from Kansas City to Louisiana, where it crosses the Mississippi River. Live stock from its Missouri stations is handled via Louisiana through Roodhouse, Ill., to East St. Louis, where the cars are turned over to the terminal association for delivery to either the St. Louis or the East St. Louis stockyards. As its route is interstate to both St. Louis and East St. Louis, it was not compelled to make any change in its rates to St. Louis in July, 1913. The rates of this line to St. Louis and East St. Louis are the same. It competes in common territory with railroads which were compelled to reduce their rates to St. Louis in 1913. Along its main line it comes into competition with the Wabash and Missouri Pacific, while a branch line extending from the main line at Mexico to the Missouri River at Cedar City is practically without competition. The shipments of all kinds of stock from the main-line points for the years 1911 and 1912 were 4,963 cars, and for the years 1914 and 1915, 3,596 cars, or a decrease of 1,367 cars. The shipments from the branch-line points for the years 1911 and 1912 were 1,952 cars and for the years 1914 and 1915, 2,013 cars, or an increase of 61 cars.

On the record we are of the opinion, and so find, that the present adjustment or relation of the rates on live stock and of the rules regarding the transportation of caretakers from Missouri points to East St. Louis and St. Louis operates to subject complainants and East St. Louis to undue prejudice and disadvantage and to give to the competitors of complainants in St. Louis and to St. Louis as a

market undue and unreasonable preference and advantage in violation of section 3 of the act to regulate commerce. This conclusion makes it necessary to arrive at some standard of reasonable maximum rates by reference to which the undue prejudice and disadvantage found to exist may be removed. For that purpose, the various scales of rates suggested for such a standard will be discussed.

#### REASONABLENESS OF THE RATES.

While the chief complaint in this case is the undue prejudice and disadvantage, complainants also represent that the present rates and the incidents thereof are unjust and unreasonable *per se*. They contend, for example, that the statutory scale of intrastate rates, which was superseded by the public service commission scale on July 15, 1917, would be a just and reasonable scale to apply to both St. Louis and East St. Louis. The position of the public service commission is that the statutory scale was too low, but that the present interstate rates to East St. Louis are too high. That commission contends that if the same scale is to apply to St. Louis and East St. Louis, the scale which it prescribed should be adopted. Opposed to both complainants and the public service commission, the defendants insist that all of their interstate rates to East St. Louis are just and reasonable and that any undue prejudice found to result from the present adjustment of rates to the two markets should be removed on the basis of the interstate rates to East St. Louis as the standard.

The reasonableness of the three scales of rates will now be considered for the purpose of ascertaining whether any of them would be proper (a) to apply in the future on interstate traffic to East St. Louis, and (b) to use as the standard in removing the undue prejudice found to result from the present relation of the state and interstate rates.

#### THE FORMER STATUTORY SCALE.

Preliminary to analyzing the former statutory scale a short history of the events which led up to its enactment will be given. The first comprehensive system of maximum rates prescribed by legislative authority in Missouri was promulgated, effective March 1, 1904, by the railroad and warehouse commission, the predecessor of the public service commission. The rates then prescribed were higher than the previously effective voluntary rates of the carriers. Accordingly, when the general assembly of the state met in 1905, an act was passed making very material reductions in the rates on live stock and other commodities. These reductions approximated nearly 40 per cent. The chief rate expert of the public service commission testified herein that the rates prescribed were made intentionally low in order "to cause an injunction or mandate to issue against them." The rates



were enjoined by the United States district court. In 1907 the general assembly met again and passed an act prescribing rates on live stock and other commodities somewhat higher than those prescribed in 1905, but from 20 to 30 per cent lower than those prescribed by the railroad and warehouse commission in 1904. No committee was appointed to take testimony or to investigate the reasonableness of the then existing rates or of the proposed rates. As stated by the chief rate expert of the public service commission, "the legislature made some investigation, but not such an investigation as would be made to-day by a commission or otherwise." The railroads immediately applied to the United States district court for an injunction against the enforcement of the new rates. On March 8, 1909, the court held that the rates were confiscatory and granted the injunction. *St. Louis & S. F. R. Co. v. Hadley*, 168 Fed., 317. An appeal was taken to the Supreme Court of the United States, and in an opinion handed down June 6, 1913, that court held that the proof was insufficient to support the judgment below, and accordingly reversed the decree of the lower court, except as to five weak roads. As to those roads, the judgment of the lower court was affirmed. *Missouri Rate Cases*, 230 U. S., 474. As to the other roads, the rates finally became effective, under protest, on July 12, 1913, and remained in effect until July 15, 1917.

The statutory rates on live stock were the same on all kinds of stock and were applicable on straight or mixed carloads. They were based upon a standard car of 29 feet to 30 feet 6 inches in length. The scale began with a base rate of \$8 per car for 25 miles and increased \$4 per car for the second 25 miles and \$2 per car for each additional 25 miles or fractional part thereof over 12 miles. The rate for distances of 25 miles to and including 62 miles, a spread of 37 miles, was therefore \$12.

After these rates had been in effect for about a year the carriers appealed to the public service commission for an increase. The commission made a thorough investigation into the financial condition of Missouri railroads and into the reasonableness of the statutory rates and embodied its conclusions in an exhaustive report containing more than 200 printed pages. *In re Atchison, Topeka & Santa Fe Ry. Co.*, 3 Mo. P. S. C., 74. It found specifically that live stock should be classified for rate-making purposes, that the rates should be named in cents per 100 pounds, and that the carload minima should be based upon a standard car of 35 feet 6 inches to 37 feet in length. It prescribed substantially the same carload minima as now apply on interstate traffic and promulgated a distance scale of rates higher, on the whole, than the statutory scale.



Complainants first contend that inasmuch as the intrastate rates were not enjoined as confiscatory by the Supreme Court of the United States and had been in force for four years, it should be assumed for the purposes of the present case that they were upon a "fair and reasonable basis, or at least that a basis reasonably approximating their level would be a fair and reasonable one." It is well established, however, that rates may be nonconfiscatory and yet fall short of being just and reasonable. *Holmes & Hollowell Co. v. G. N. Ry. Co.*, 37 I. C. C., 627, 635; *Trier v. C., St. P., M. & O. Ry. Co.*, 30 I. C. C., 352, 355; *Detroit & M. R. Co. v. Michigan Railroad Commission*, 203 Fed., 864. In its report regarding the former statutory rates the public service commission recognizes this distinction in the following words:

A rate not so unjust and unreasonably low as to be considered confiscatory by a court may yet be lower than a commission, in the exercise of its powers, would fix as a reasonable and just maximum rate for the service performed.

Complainants present a comparison of the car-mile earnings on the former statutory rates for a 36-foot car with the average car-mile earnings on all freight handled by Missouri carriers during the year ended June 30, 1915, as demonstrating the reasonableness of the statutory rates. To the comparison as presented has been added the average ton haul on all freight during the same year. The average ton haul, including as it does less-than-carload as well as carload freight, is probably less than the average car haul. The comparison, thus supplemented, is as follows:

Miles.	Live stock.		All freight.		
	Rates per 36-foot car.	Car-mile earnings.	Car-mile earnings.		Average haul (miles).
25.....	\$8.80	\$0.35	A., T. & S. F. ....	\$0.16277	288
50.....	13.20	.22	C., M. & St. P. ....	.13152	248
75.....	15.40	.21	C., B. & Q. ....	.14098	269
100.....	17.60	.18	C., R. I. & P. ....	.14361	238
125.....	19.80	.16	St. L. & S. F. ....	.18189	174
150.....	22.00	.15	St. L., I. M. & S. ....	.18831	288
175.....	24.20	.14	Mo. Pac. ....	.14708	206
200.....	26.40	.13	C. & A. ....	.12511	183
225.....	28.60	.13	C. G. W. ....	.13131	244
250.....	30.80	.12	St. L. S. W. ....	.15551	128
300.....	35.20	.12	M., K. & T. ....	.16967	228
			Wabash. ....	.11418	269

The average car-mile earnings on all freight include the earnings from divisions of joint rates as well as from local rates, and are therefore not comparable with the car-mile earnings on local single-line distance rates for the same reason that rates and divisions of rates are not comparable. The percentage of the empty to the loaded movement of stock cars is much greater than that of all cars.

The record in the case indicates that the average haul of live stock from points in Missouri to St. Louis and East St. Louis is between 150 and 175 miles, which is less than the average haul on all freight handled by each of the Missouri carriers shown with but one exception. The loss and damage claims on live-stock traffic are comparatively heavy. For these reasons the fact that the car-mile earnings on the former statutory rates were greater than the average car-mile earnings on all freight is not especially significant.

The following table, compiled from exhibits filed by defendants, presents a comparison of the former statutory rates in Missouri with the yield of statutory or commission-made rates in states surrounding Missouri. The rates shown apply on cattle, as fairly typical of all live stock.

*Rates in dollars per car of 36 feet 6 inches.*

	Missouri.	Iowa.	Illinois.	Arkansas.	Oklahoma.	Kansas.	Nebraska.
25.....	8.80	14.52	14.30	11.00	15.40	12.10	14.52
50.....	13.20	17.60	16.94	17.60	20.90	16.50	19.52
75.....	15.40	19.80	19.14	22.00	25.30	22.00	24.31
100.....	17.60	22.00	20.90	26.40	28.60	25.80	29.92
150.....	22.00	24.86	23.76	35.20	34.10	30.80	35.53
200.....	26.40	27.72	26.62	39.60	39.60	35.20	41.14
300.....	35.20	33.88	32.34	52.80	48.40	41.80	51.41

It will be noted that the former statutory rates were for most distances considerably lower than those in effect in any of the states surrounding Missouri, including Iowa and Illinois.

The former statutory scale can not be accepted as the standard of just and reasonable rates from Missouri points to East St. Louis.

THE PUBLIC SERVICE COMMISSION SCALE.

The public service commission scale is constructed by using the rates on cattle as the base rates. The rates on cattle apply also on calves, single deck and double deck, hogs, double deck, and sheep, double deck. The rates on horses and mules, and on hogs, single deck, are approximately 117 per cent, and on sheep, single deck, approximately 147 per cent, of the rates on cattle.

The scale on cattle begins with a rate of 5 cents per 100 pounds for 5 miles, and up to 300 miles increases as follows:

- Over 5 miles to and including 20 miles, 4 mills per 5 miles.
- Over 20 miles to and including 25 miles, 5 mills per 5 miles.
- Over 25 miles to and including 30 miles, 2 mills per 5 miles.
- Over 30 miles to and including 50 miles, 3 mills per 5 miles.
- Over 50 miles to and including 80 miles, 1 mill per 5 miles.
- Over 80 miles to and including 85 miles, 1 mill per 5 miles.
- Over 85 miles to and including 105 miles, 2 mills per 5 miles.
- Over 105 miles to and including 110 miles, 1 mill per 5 miles.

Over 110 miles to and including 115 miles,	2 mills per	5 miles.
Over 115 miles to and including 120 miles,	1 mill per	5 miles.
Over 120 miles to and including 125 miles,	2 mills per	5 miles.
Over 125 miles to and including 130 miles,	1 mill per	5 miles.
Over 130 miles to and including 135 miles,	2 mills per	5 miles.
Over 135 miles to and including 145 miles,	1 mill per	5 miles.
Over 145 miles to and including 150 miles,	2 mills per	5 miles.
Over 150 miles to and including 170 miles,	1 mill per	5 miles.
Over 170 miles to and including 175 miles,	2 mills per	5 miles.
Over 175 miles to and including 190 miles,	1 mill per	5 miles.
Over 190 miles to and including 195 miles,	2 mills per	5 miles.
Over 195 miles to and including 200 miles,	1 mill per	5 miles.
Over 200 miles to and including 260 miles,	2 mills per	10 miles.
Over 260 miles to and including 270 miles,	8 mills per	10 miles.
Over 270 miles to and including 290 miles,	2 mills per	10 miles.
Over 290 miles to and including 300 miles,	1 mill per	10 miles.

It is evident from the above analysis of the scale that it was not constructed with regard to the usual principles of rate making. No consistent basis seems to have been used either in arriving at the various rates of progression or in determining the extent of the differing mileage blocks marking the variations in rate progression.

In its report prescribing the rates now under consideration the public service commission said, at page 186:

The testimony in this case clearly indicates that Missouri intrastate traffic is entitled to as low or lower rates than traffic in the state of Iowa and lower rates than apply in Arkansas, Oklahoma, or Kansas.

And at page 190:

On cattle the commission is of the opinion that a rate somewhat higher than the Illinois state rate should apply and will so prescribe.

The chief rate expert of the public service commission testified herein that, having been apprised of the above view of the commission, he constructed the scale which was finally adopted. In other words, it appears that while the Missouri commission made a most exhaustive and painstaking investigation into the general level of all rates in the state and into the financial condition of the carriers operating therein, the rates on live stock in the neighboring states of Iowa and Illinois contributed in large measure to the setting of the final basis which the commission adopted for application in Missouri.

In support of the above view of the public service commission, its chief rate expert presented several exhibits comparing the density of population, miles of railroad, head of stock on farms, and various other statistics of the states of Missouri, Iowa, and Illinois. It is not deemed necessary to reproduce these exhibits here. Missouri intrastate rates, so constructed, are not shown to be just and reasonable maximum interstate rates from points in Missouri to East St.

Louis. There is nothing in the present record which would justify the assumption that the Iowa and Illinois rates would be just and reasonable for application on interstate traffic. On the other hand in *Corn Belt Meat Producers' Asso. v. C., B. & Q. Ry. Co.*, 14 I. C. C., 376, 385, 394, it was decided that, while the intrastate rates in those states may be "just and reasonable, considered as a part of the general scheme of rates" promulgated and put into effect by their respective commissions, they could not be used as standards of reasonableness in the adjustment of interstate rates from Iowa points to Chicago.

Another exhibit of the chief rate expert of the Missouri commission compares the average ton-mile earnings from all freight handled during the year ended June 30, 1915, by eight Missouri railroads with the ton-mile earnings from the rates on cattle prescribed by the commission for distances representing the average hauls of the respective lines on all freight. The comparison, to which has been added the average number of tons per loaded car-mile on all freight handled by the lines indicated, is shown in the subjoined table:

Railroad.	All freight.			Cattle.
	Average haul.	Average ton-mile earnings.	Average tons per loaded car-mile.	Ton-mile earnings from Commission's rates for same distance.
	Miles.	Miles.		
C. & A.....	182.51	6.41	23.34	13.25
C., B. & Q.....	268.51	7.33	22.73	10.51
C., R. I. & P.....	238.27	8.62	19.78	11.25
M., K. & T.....	223.36	9.89	20.11	11.82
Mo. Pac.....	205.08	8.10	20.82	12.28
St. L., I. M. & S.....	238.49	7.34	22.06	11.25
St. L. & S. F.....	173.68	9.41	22.23	12.67
Wabash.....	238.96	6.32	20.45	11.25
General average.....	221.10	7.93	21.44	11.78

The general averages contained in the above table were obtained by dividing the sums of the figures for all lines by the number of lines, a method which is obviously not perfect but which gives some general idea of the composite experience of all the lines. The figures indicate that the average ton-mile earnings from the commission's rates on cattle are much greater than the average ton-mile earnings of the lines on all freight, but the average load of all freight, 21.44 tons, is nearly twice that on cattle, which is about 11 tons. The average ton-mile earnings from all freight include the earnings from divisions of joint rates as well as from local rates. The ratio of the empty to the loaded movement of all freight cars is much less than

that of stock cars. The proportion which the loss and damage claims bear to the total charges paid is much greater on live stock than on all freight. The cost of the expedited service given to live stock is greater than the ordinary service given to freight in general. For these and other reasons which might be stated, little weight can be given to this comparison.

The following exhibit comparing certain interstate rates on cattle with the public-service commission's rates for the same distances is also submitted in support of the latter rates:

*Rates on cattle, in cents per 100 pounds.*

From—	To—	Miles.	Rate.	Commission's rate.
Bonita, Kans.....	Kansas City, Kans.....	25	5	6.6
Wagstaff, Kans.....	do.....	46	6.5	8.1
Holliday, Kans.....	St. Joseph, Mo.....	78	6	9.1
Lomot, Kans.....	Kansas City, Mo.....	96	8.5	10
Ottawa, Kans.....	St. Joseph, Mo.....	128	8	10.8
Garrett, Kans.....	do.....	147	10.5	11.5
Iola, Kans.....	do.....	174	11	12.1
Lockport, Ill.....	Fort Madison, Iowa.....	200	12.1	12.7
Brailton, Kans.....	St. Joseph, Mo.....	224	11	13.8
Chicopee, Kans.....	do.....	248	13	13.7
Piedmont, Kans.....	do.....	299	14	14.7

It will be noticed that all but one of the comparisons are with rates from points in Kansas to the Missouri River markets of Kansas City and St. Joseph. The rates from points in Kansas to these two markets are generally the same, notwithstanding the difference in distance. For example, the distance from Iola, Kans., to Kansas City is 108 miles and the rate 11 cents, which is also the rate to St. Joseph. The rates cited are admittedly sorted out from a large number of interstate rates, and are not the basis for a representative showing.

It is not deemed necessary to discuss further the public service commission scale. We are of the opinion, on the record before us, that the scale of rates on live stock, which became effective on July 15, 1917, on intrastate traffic is not shown to be the proper measure of reasonableness to apply from Missouri points to East St. Louis, nor the proper standard by which to remove the undue prejudice and disadvantage found to flow from the present relation of state and interstate rates.

#### THE INTERSTATE RATES.

The rates from points in Missouri to East St. Louis, and to St. Louis applicable on interstate traffic, do not appear to be constructed upon any uniform basis either in respect to the percentage relationship of the various classes of live stock, the respective levels from equidistant points on the different lines, or the St. Louis-East St.

Louis differences or differentials. The rates on cattle apply also on hogs and sheep in double-deck cars via all lines, but the relationship of the rates on horses and mules, cattle, hogs, single deck, and sheep, single deck, varies on the different lines, and from different points on the same lines. Beyond a radius of about 100 miles the interstate rates from points in southern Missouri are slightly higher than from equidistant points in northern Missouri, but there is no uniformity from equidistant points on southern Missouri lines or from equidistant points on northern Missouri lines. The interstate rates to St. Louis and East St. Louis are the same from but comparatively few Missouri points on the St. Louis-San Francisco. They are the same from all Missouri points on the Chicago & Alton, Quincy, Omaha & Kansas City, Kansas City Southern, Atchison, Topeka & Santa Fe, and St. Louis-Southwestern.

We will next consider the general level of the interstate rates in question.

The comparisons presented in respect to the present interstate rates may be divided into three classes: (1) Comparisons with the rates on other commodities from representative points, (2) comparisons with the rates on live stock from and to other points, and (3) comparisons with distance rates prescribed by this Commission and by various state commissions. Comparisons with average rates will be with the average rates to St. Louis applicable on interstate traffic, which make up the general average rates shown on page 293, but it should be borne in mind that the average rates to East St. Louis are the same as or higher than the average rates to St. Louis applicable on interstate traffic.

(1) The St. Louis-San Francisco submits an exhibit comparing the car-mile revenue on live stock from Sikeston and Aurora, Mo., with that on selected commodities such as agricultural implements, canned goods, grain, iron and steel articles, fruits and vegetables, lumber, machinery, etc., from the same points. The car-mile revenue on live stock from Sikeston, 166 miles to East St. Louis, ranges from 14 cents on sheep to 24½ cents on horses and mules; from Aurora, 269 miles to East St. Louis, from 12.9 cents on sheep to 20 cents on horses and mules. The car-mile revenue on the other commodities from Sikeston ranges from 15.9 cents on lime to 81.3 cents on machinery; from Aurora, from 10.7 cents on lime to 56.7 cents on machinery.

The Rock Island submitted an exhibit comparing the car earnings on live stock with those on selected commodities such as grain, fruits, lumber, cement, lime, implements, etc., from points on its main line between St. Louis and Kansas City. From Windsor, 218 miles to St. Louis, for example, the car earnings on live stock are \$29.38, while



those on the other commodities range from \$29.40 on furniture to \$93.08 on wheat.

The Missouri Pacific-Iron Mountain presented exhibits comparing the car earnings, the ton-mile revenue, and the gross ton-mile earnings, including the weight of the car and contents, on live stock with those on selected commodities from Mineral Point and Blodgett, Mo., on the Iron Mountain, and from Doniphan and Berger, Mo., on the Missouri Pacific. The gross ton-mile earnings range as follows: from Mineral Point: live stock, from 11.2 mills to 13.8 mills; other commodities, from 13.9 mills to 33.9 mills; from Blodgett: live stock, 5.8 mills to 9 mills; other commodities, 7.8 mills to 20.6 mills; from Doniphan: live stock, 6.8 mills to 8.1 mills; other commodities, 7.3 mills to 18.8 mills; from Berger: live stock, 12.5 mills to 13.7 mills; other commodities, 12 mills to 23.2 mills.

The comparisons just cited are not without their serious limitations. No definite evidence was introduced descriptive of the circumstances and conditions surrounding the movement of the commodities compared except in respect to the car loading and the tare weight of the cars used. The other commodities load very much heavier than does live stock. Naturally, therefore, the car earnings and car-mile earnings thereon are greater than on live stock. As to the volume of the movement of the other commodities, and as to whether they ever move in trainloads, the record is silent. It follows that the bare comparisons may be equally demonstrative, at least theoretically, of the comparatively high level of the rates on the other commodities as of the comparatively low level of the rates on live stock. See *Louisville & N. R. Co. v. United States*, 238 U. S., 1, 11-12.

(2) A witness for the Rock Island introduced an exhibit showing the rates on live stock in blocks of 25 miles from points on that line in Missouri, Iowa, and Kansas to Kansas City, from points on that line in Kansas to St. Joseph, from points on that line in Kansas and Nebraska to Omaha, and from points on that line in Iowa and Illinois to Chicago. A witness for the Burlington filed an exhibit containing similar information from points on that line in Nebraska to Omaha, St. Joseph, and Kansas City, from points on that line in Iowa and Illinois to Chicago and Omaha, and from points on that line in Iowa and intermediate points in Missouri to St. Louis and East St. Louis. A witness for the Wabash presented a like comparison of the rates from points on that line in Missouri to Kansas City, Kans., from points on that line in Iowa and Missouri to Omaha, and from points on that line in Illinois to Chicago. By averaging the rates contained in each of the three exhibits referred to and then averaging the averages thus obtained, a fairly comprehensive idea



of the general level of rates from points in this territory to other markets may be secured. All three of the exhibits contain some commission-made rates from Illinois points to Chicago, and two of them contain statutory rates from Nebraska points to Omaha. The inclusion of those rates has the effect of bringing down the average level of all the rates, so that the averages obtained can not be said to represent what the carriers themselves deem just and reasonable rates. On the other hand the effect of these rates in the general averages should be considered in connection with the inclusion therein of many interstate rates from points west of the Missouri River to Missouri River markets, a higher-rated territory than Missouri.

The subjoined table is a comparison of the average rates to other markets contained in each of the three exhibits above referred to with the average rates of the seven principal lines from representative Missouri points to St. Louis applicable on interstate traffic:

*Rates on horses and mules in dollars per standard car; on cattle, hogs, and sheep in cents per 100 pounds.*

Mile- age block.		Horses, mules.	Cattle.	Hogs, single deck.	Sheep, single deck.
25	LaCoste, Exhibit 10.....	14.10	5.30	6.58	8.61
	Spens, Exhibit 13.....	16.22	6.22	7.63	8.23
	Farrell, Exhibit 22.....	13.61	6.00	6.6	8.7
	General average.....	14.64	5.84	6.94	8.51
	Missouri-St. Louis (interstate).....	11.89	5.6	6.1	9
	Missouri-East St. Louis.....	17.24	6.8	7.4	10.4
50	LaCoste, Exhibit 10.....	17.37	6.79	9.10	10.81
	Spens, Exhibit 13.....	21.33	8.30	10.14	11.19
	Farrell, Exhibit 22.....	20.85	8.66	10.03	12.86
	General average.....	19.85	7.91	9.76	11.62
	Missouri-St. Louis (interstate).....	19.00	8.2	9.8	12.6
	Missouri-East St. Louis.....	24.13	9.5	11.1	13.4
75	LaCoste, Exhibit 10.....	21.29	9.12	11.63	13.99
	Spens, Exhibit 13.....	24.77	7.69	11.94	13.88
	Farrell, Exhibit 22.....	25.15	10.5	11.86	13.9
	General average.....	23.74	9.10	11.79	13.92
	Missouri-St. Louis (interstate).....	24.06	10.1	11.9	14.2
	Missouri-East St. Louis.....	27.47	10.6	12.3	14.66
100	LaCoste, Exhibit 10.....	25.82	9.98	12.69	15.75
	Spens, Exhibit 13.....	28.27	8.43	13.21	14.87
	Farrell, Exhibit 22.....	25.94	10.25	12.35	15.45
	General average.....	26.68	9.55	12.75	15.36
	Missouri-St. Louis (interstate).....	29.00	11	12.8	15.4
	Missouri-East St. Louis.....	31.64	11.60	13.21	16.71
125	LaCoste, Exhibit 10.....	31.04	11.07	13.75	16.7
	Spens, Exhibit 13.....	31.49	11.46	14.33	16.77
	Farrell, Exhibit 22.....	31.52	12.2	14.13	16.76
	General average.....	31.35	11.58	14.06	16.74
	Missouri-St. Louis (interstate).....	33.48	12.75	14.1	17.3
	Missouri-East St. Louis.....	34.03	12.78	14.1	16.66
150	LaCoste Exhibit 10.....	34.84	12.8	15.92	17.77
	Spens Exhibit 13.....	33.63	12.20	15.12	17.43
	Farrell Exhibit 22.....	31.21	11.75	13.95	17.45
	General average.....	33.23	12.25	14.99	17.56
	Missouri-St. Louis (interstate).....	37.44	13.7	15.2	17.8
	Missouri-East St. Louis.....	38.85	13.85	16.38	17.73

*Rates on horses and mules in dollars per standard car, etc.—Continued.*

Mile- age block.		Horses, mules.	Cattle.	Hogs, single dock.	Sheep, single dock.
175	La Coste Exhibit 10.....	38.94	13.9	16.92	19.22
	Spens Exhibit 13.....	36.71	13.42	16.18	17.52
	Farrell Exhibit 22.....	37.63	13.76	15.93	18.33
	General average.....	37.76	13.69	16.34	18.36
	Missouri-St. Louis(interstate).....	41.35	15	16.5	18.7
	Missouri-East St. Louis.....	42.12	14.75	16.37	18.71
200	La Coste Exhibit 10.....	44.00	15.6	18	20.5
	Spens Exhibit 13.....	39.19	13.86	16.5	17.91
	Farrell Exhibit 22.....	41.5	14.96	16.93	18.6
	General average.....	41.56	14.77	17.14	19.60
	Missouri-St. Louis(interstate).....	44.78	15.6	18.1	20.4
	Missouri-East St. Louis.....	45.47	17.44	18.06	20.4
225	La Coste Exhibit 10.....	48.25	16.2	18.75	19.87
	Spens Exhibit 13.....	43.83	14.98	17.64	18.81
	Farrell Exhibit 22.....	53.52	17.25	18.5	18.75
	General average.....	48.53	16.14	18.29	19.14
	Missouri-St. Louis(interstate).....	49.76	16.2	18.3	20.2
	Missouri-East St. Louis.....	49.75	16.2	18.3	20.2
250	La Coste Exhibit 10.....	49.60	16.75	18.87	20.12
	Spens Exhibit 13.....	50.42	16.84	20.01	20.81
	Farrell Exhibit 22.....	49.23	16.13	17.5	18.9
	General average.....	49.71	16.57	18.79	19.94
	Missouri-St. Louis(interstate).....	54.30	17.1	19.4	21.1
	Missouri-East St. Louis.....	54.30	17.1	19.4	21.1
275	La Coste Exhibit 10.....	55.22	18.12	20.12	21.75
	Spens Exhibit 13.....	53.67	17.42	21.23	23.66
	Farrell Exhibit 22.....	46.09	15.8	16.95	18.75
	General average.....	51.66	17.11	19.43	21.39
	Missouri-St. Louis(interstate).....	57.23	17.9	19.9	22.2
	Missouri-East St. Louis.....	57.23	17.9	19.9	22.2
300	La Coste Exhibit 10.....	.....	.....	.....	.....
	Spens Exhibit 13.....	54.04	17.91	21.14	21.98
	Farrell Exhibit 22.....	47.08	16.2	17.15	19.5
	General average.....	55.56	17.05	19.15	20.74
	Missouri-St. Louis(interstate).....	59.23	19.6	21.6	25.2
	Missouri-East St. Louis.....	59.23	19.6	21.6	25.2

NOTE.—Missouri-East St. Louis figures shown are averages of rates to East St. Louis from the same points as were used for Missouri-St. Louis interstate mileage blocks; and allowance must possibly be made for slightly greater distances to which the calculated Missouri-East St. Louis averages apply, although this is, to some extent, obviated because the traffic via some of the routes used moves through East St. Louis to St. Louis.

A careful study of the above table indicates that the average level of the Missouri-St. Louis rates applicable on interstate traffic, and, therefore, the Missouri-East St. Louis rates, is, with but few exceptions, considerably higher than that from and to points in the same general territory.

In addition to the three exhibits described above, a witness for the St. Louis-San Francisco presented exhibits comparing the present rates from Missouri points on that line to St. Louis and East St. Louis with (a) the present rates from equidistant Missouri points on the same line to Kansas City, (b) the present rates from equidis-

tant points on the same line to Memphis, (c) the present rates from points on the Illinois Central and Mobile & Ohio in Kentucky, Tennessee, and Mississippi to East St. Louis. It is not deemed necessary to set out these comparisons in detail. The rates from Missouri points to Kansas City show the same lack of harmony and consistency as the rates from equidistant points to East St. Louis. The relative adjustment of the rates to the two markets also varies. For example, the rate on cattle from Phillipsburg to Kansas City, 238 miles, is 3.30 per 36-foot car less than that from Springfield to St. Louis-East St. Louis, 238 miles, whereas the rate on cattle from Kennett to St. Louis-East St. Louis, 223 miles, is 2.20 per 36-foot car less than that from Chadwick to Kansas City, 224 miles.

In respect to the comparison with the rates to Memphis, it may be stated that there is no general market for live stock at Memphis and little movement thereto, and that a witness for the Missouri Pacific testified that the rates thereto are not properly comparable with those to East St. Louis. The production of live stock in Kentucky, Tennessee, and Mississippi is so much less than that in Missouri, and the movement from those southeastern states so much less than that from Missouri to East St. Louis that little weight can be given to any comparison of the rates. During the year 1916 the total movement of all stock via all lines to East St. Louis was 7,802 cars from the three southwestern states combined, as compared with 28,947 cars from Missouri alone. The rates from points on the Illinois Central and Mobile & Ohio in the heavy stock-producing state of Illinois to East St. Louis are based upon the Illinois commission's scale, and yet the total movement of all stock from all points on the lines named to East St. Louis compared as follows: St. Louis-San Francisco, 10,202 cars; Illinois Central, 3,843 cars; Mobile & Ohio, 5,385 cars.

(3) The subjoined table compares the average interstate rates on live stock from representative Missouri points on the seven principal lines to St. Louis with the rates prescribed by this Commission (a) from Texas and Oklahoma points to Fort Worth, Tex., Oklahoma City, Okla., and Wichita, Kans., in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, hereinafter referred to as the *Oklahoma-Texas scale*; and (b) between points in central freight association territory in the *Eastern Live Stock Case*, 36 I. C. C., 675, hereinafter referred to as the *C. F. A. scale*. We designedly omit reference to the so-called Shreveport scale set in the *Shreveport Case*, 41 I. C. C., 83, 111, for the reason that there is no general market for live stock at Shreveport.

*Rates in cents per 100 pounds.*

Mileage block.		Horses, mules.	Cattle.	Hogs, single deck.	Sheep, single deck.
25	Oklahoma-Texas scale.....	.....	6	7	7.25
	C. F. A. scale.....	.....	7.5	8.6	9.4
	Missouri-St. Louis (interstate).....	5.1	5.6	6.1	9
	Missouri-East St. Louis.....	7.6	6.8	7.4	10.4
50	Oklahoma-Texas scale.....	.....	8.75	10	11
	C. F. A. scale.....	.....	8.5	9.8	10.6
	Missouri-St. Louis (interstate).....	8.2	8.2	8.9	12.6
	Missouri-East St. Louis.....	10.6	9.5	11.1	12.4
75	Oklahoma-Texas scale.....	.....	11	12.5	13.75
	C. F. A. scale.....	.....	10	11.5	12.5
	Missouri-St. Louis (interstate).....	10.4	10.1	11.9	14.2
	Missouri-East St. Louis.....	11.6	10.6	12.3	14.7
100	Oklahoma-Texas scale.....	.....	12.5	14.25	15.5
	C. F. A. scale.....	.....	11	12.7	13.8
	Missouri-St. Louis (interstate).....	12.5	11	12.8	15.4
	Missouri-East St. Louis.....	13.6	11.6	13.2	16.7
125	Oklahoma-Texas scale.....	.....	13.17	15.75	17.2
	C. F. A. scale.....	.....	12.5	14.4	15.6
	Missouri-St. Louis (interstate).....	14	12.75	14.1	17.3
	Missouri-East St. Louis.....	14.7	12.78	14.1	16.7
150	Oklahoma-Texas scale.....	.....	15	17.25	18.75
	C. F. A. scale.....	.....	13.25	15.21	16.6
	Missouri-St. Louis (interstate).....	16.1	13.7	15.2	17.8
	Missouri-East St. Louis.....	16.7	13.9	16.4	17.7
175	Oklahoma-Texas scale.....	.....	16	18.75	20.25
	C. F. A. scale.....	.....	14	16.1	17.5
	Missouri-St. Louis (interstate).....	17.8	15	16.5	18.7
	Missouri-East St. Louis.....	18.1	14.8	16.4	18.7
200	Oklahoma-Texas scale.....	.....	17.5	20	22
	C. F. A. scale.....	.....	14.5	16.7	18.1
	Missouri-St. Louis (interstate).....	19.3	15.6	18.1	20.4
	Missouri-East St. Louis.....	19.6	17.4	18.1	20.4
225	Oklahoma-Texas scale.....	.....	19	21.75	23.75
	C. F. A. scale.....	.....	15.25	17.5	19.1
	Missouri-St. Louis (interstate).....	21.4	16.2	18.3	20.2
	Missouri-East St. Louis.....	21.4	16.2	18.3	20.2
250	Oklahoma-Texas scale.....	.....	20	23	25
	C. F. A. scale.....	.....	15.75	18.11	19.7
	Missouri-St. Louis (interstate).....	23.4	17.1	19.4	21.1
	Missouri-East St. Louis.....	23.4	17.1	19.4	21.1
275	Oklahoma-Texas scale.....	.....	21.5	24.75	27
	C. F. A. scale.....	.....	16.5	19	20.6
	Missouri-St. Louis (interstate).....	24.9	17.9	19.9	22.2
	Missouri-East St. Louis.....	24.9	17.9	19.9	22.2
300	Oklahoma-Texas scale.....	.....	22.5	25.75	28
	C. F. A. scale.....	.....	17	19.6	21.3
	Missouri-St. Louis (interstate).....	25.6	19.6	21.6	25.2
	Missouri-East St. Louis.....	25.6	19.6	21.6	25.2

NOTE.—See note to table on page 306.

During the year 1916 the combined receipts of cattle, calves, hogs, and sheep at Fort Worth, Oklahoma City, and Wichita were 4,493,484 head, a very large part of which moved into those mar-

47 L. C. C.

kets on state rates and therefore not affected by the *Oklahoma-Texas* scale. During the same year the combined receipts of the same kinds of stock at the Missouri markets of East St. Louis, Kansas City, and St. Joseph were 15,480,180 head, only a small part of which moved on state rates. The average weight of the animals received at the Missouri markets named is also much heavier than that of the animals received at the southwestern markets named. The live stock, including horses and mules, cattle, not milch cows, hogs, or sheep on farms in Texas and Oklahoma, the states covered by the *Oklahoma-Texas* scale, is equal to 745 head per mile of railroad, as compared with 1,074 head per mile of railroad in Missouri. These figures show that the density of live-stock traffic is much heavier in Missouri territory than in the southwestern territory.

The Atchison, Topeka & Santa Fe; Kansas City Southern; St. Louis-San Francisco; Missouri Pacific; and Missouri, Kansas & Texas railroads traverse the state of Missouri and all parts of the territory covered by the *Oklahoma-Texas* scale. In the proceeding before the public-service commission figures were presented showing the tons handled 1 mile per mile of road on lines in Missouri, and on the entire lines of Missouri roads, for the year ended June 30, 1914. In the following table these figures have been divided by the miles of line of each of the roads named in Missouri, and in all states, respectively, in order to indicate how the traffic density of these roads in Missouri compares with that of their systems as a whole:

*Tons handled 1 mile per mile of road.*

	Missouri lines.	Entire lines.
Atchison, Topeka & Santa Fe.....	1,285,426	706,684
Kansas City Southern.....	1,747,517	1,284,801
St. Louis-San Francisco.....	609,035	615,774
Missouri Pacific.....	899,006	609,465
Missouri, Kansas & Texas.....	611,853	488,837

The density on all lines of the roads named includes that derived from hundreds of miles of line lying outside the territory covered by the *Oklahoma-Texas* scale. For example, the density on all the lines of the Atchison, Topeka & Santa Fe includes its main trunk line through Illinois. If the density in the territory covered by that scale could be allocated separately, a much greater divergence from that in Missouri would appear than is shown by the above table. An exhibit presented by defendants herein shows that during the year ended June 30, 1916, the density of traffic on the Atchison, Topeka & Santa Fe east of the Missouri River was 2,122,205 ton-miles per mile of road, while that on the entire line, including the Gulf, Colorado & Santa Fe, was only 875,369 ton-miles per mile of road.

It must also be remembered that there are numerous short roads traversing the territory covered by the *Oklahoma-Texas scale* whose traffic is largely local and whose density of traffic is but a small percentage of that of the defendants in Missouri. The state of Missouri is a sort of funnel through which pours an immense tonnage of through traffic from the west and southwest.

The *Oklahoma-Texas scale* is higher than the rates found reasonable in *Cattle Raisers Asso. of Texas v. M., K. & T. Ry Co.*, 11 I. C. C., 296, from equidistant Texas and Oklahoma points to Kansas City. In the rehearing of the *Oklahoma-Texas Case*, 23 I. C. C., 656, 660, this fact was stressed by certain interests to show that the *Oklahoma-Texas scale* was too high, but it was held, in effect, that the rates to the three southwestern markets might properly be higher than the rates from equidistant points to Kansas City. Again, in *Transportation of Live Stock*, 25 I. C. C., 63, 64, in which the carriers contended that they should be permitted to apply from points in New Mexico and the panhandle of Texas to Kansas City the distance scale found reasonable in the *Oklahoma-Texas Case*, *supra*, it was said:

In disposing of the *Oklahoma Case* the Commission distinctly stated that the mileage scale there prescribed was not fixed as an ideal scale applicable in all cases, but merely as what seemed to be just for the territory in which it was to be made operative. This scale was to apply to Fort Worth, Oklahoma City, and Wichita, mainly from points south and west. Generally speaking, as the distance from the stations increased territory was penetrated where traffic became light and cost of operation heavy. It would by no means follow that a scale which was just for 500 miles from Oklahoma City west through the panhandle and into New Mexico would be just for 500 miles from Kansas City into the panhandle.

Citing *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 26 I. C. C., 520, and *Iowa State Board of R. R. Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 193, 204, in support of its conclusion, the public service commission also declined to recognize the *Oklahoma-Texas scale* as a proper standard for its proposed Missouri scale.

The percentage relations of the rates on the various kinds of stock under the *C. F. A. scale* are the same as that under the *Oklahoma-Texas scale*. The defendants endeavored to have the public service commission adopt the latter scale in Missouri. At the first of the two hearings in the present case, defendants presented numerous exhibits comparing the rates from points on their respective lines in Missouri to East St. Louis and St. Louis with the *C. F. A. scale*. At the second hearing, however, they took the position that the *C. F. A. scale* is too low to apply in the territory here involved. A close study of the table on pages 306 and 308 shows that up to and including 150 miles, the *C. F. A. scale* closely approximates the pres-



ent average level of the interstate rates from Missouri points to St. Louis. Over 150 miles the *C. F. A. scale* averages about a cent lower than the latter rates, but by reference to the table on page 306, it will be noticed that the latter rates are also higher than the general level of rates in western trunk line territory. The average haul of live stock from Missouri points to East St. Louis and St. Louis is in the neighborhood of 150 miles, and for this distance the present rates are practically the same as the *C. F. A. scale*. A witness for the Chicago, Burlington & Quincy introduced an exhibit comparing the present rates from 52 main line stations on that line to East St. Louis with the *C. F. A. scale*, using the short-line distance from junction points and applying the latter scale for such distances as maxima at intermediate points. The average rates from all points shown in the exhibit compare as follows:

	Cattle.	Hogs, single deck.	Sheep, single deck.
	Cents.	Cents.	Cents.
Present average rates.....	14.48	16.85	18.46
Average rates under C. F. A. scale.....	15.14	17.42	18.93

During the year 1915 the combined receipts of cattle, calves, hogs, and sheep at Cincinnati, Cleveland, and Indianapolis, the markets for live stock in central freight association territory, were 5,783,502 head, a very large percentage of which moved short distances on state rates, and therefore not affected by the *C. F. A. scale*. During the same year the combined receipts at East St. Louis, Kansas City, and St. Joseph were 13,557,772 head, only a small percentage of which moved on state rates. The live-stock traffic in central freight association territory is largely pick-up service, i. e., one and two car lots picked up by way trains, whereas a great deal of the traffic in Missouri territory is in trainloads. On January 1, 1916, the live stock on farms in Indiana, Ohio, and Michigan was 796 head per mile of railroad, and in Indiana, Ohio, Michigan, and Illinois 757 head per mile of railroad. On the same date there were in Missouri 1,074 head per mile of railroad, and in Missouri and Iowa 1,238 head per mile of railroad. In the *Eastern Live Stock Case* it appeared that during the fiscal year 1911 the percentage of live-stock tonnage to total revenue tonnage handled was 3.28 per cent in the western district and 0.6 per cent in the eastern district.

In respect to general traffic density the territory west and southwest of the Missouri River is to the western district as a whole what central freight association territory is to the eastern district as a whole. Similarly, the states of Missouri, Iowa, and Illinois stand in the same relation to the western district as a whole as eastern trunk



line territory to the eastern district as a whole. In determining how the rates in Missouri territory should compare with the *C. F. A. scale*, therefore, it is not proper to compare the traffic density in the western district with that in the eastern district. In the subjoined table is shown a comparison of the general traffic density of western lines in the state of Missouri for the year ended June 30, 1914, and of typical eastern roads whose lines lie wholly or almost wholly in central freight association territory for the same year:

*Tons handled 1 mile per mile of road.*

Missouri lines only.	Tons.	Entire lines.	Tons.
Atchison, Topeka & Santa Fe.....	1,285,426	Cleveland, Cincinnati, Chicago & St. Louis.....	1,666,466
Chicago, Burlington & Quincy.....	1,102,344	Vandalia.....	1,375,451
Chicago & Alton.....	1,225,212	Pittsburgh, Cincinnati, Chicago & St. Louis.....	2,150,448
Chicago, Milwaukee & St. Paul.....	1,606,067	Michigan Central.....	1,785,417
Kansas City Southern.....	1,747,517	Pere Marquette.....	778,280
Wabash.....	1,320,806	Wabash.....	1,320,806
St. Louis-San Francisco.....	608,085	N. & St. Louis.....	2,322,561
St. Louis, Iron Mountain & Southern.....	607,650	St. Louis & Louisville.....	1,022,031
St. Louis Southwestern.....	614,151	St. Louis & Dayton.....	1,454,086
Chicago, Rock Island & Pacific.....	611,353	La. & Western.....	1,075,828
Missouri, Kansas & Texas.....	809,006	Ala. & Tenn.....	810,708
Missouri Pacific.....	809,006	La. & Tenn.....	923,618
		San Southern.....	2,250,288
		Ala. & Tenn.....	2,368,937
All above-named lines in Missouri.....	926,800	All above-named lines.....	1,739,013
Western district as a whole.....	730,019	Eastern district as a whole.....	2,439,477

The above table shows that the general traffic density in Missouri is 26.96 per cent greater than that in the western district as a whole, whereas that in central freight association territory is 28.71 per cent less than that in the eastern district as a whole. It further shows that the Missouri density of the Kansas City Southern is greater than the average density of the central freight association lines, and greater than that of 9 out of 15 of those lines; that the Missouri density of the Chicago, Milwaukee & St. Paul is greater than that of 8 of the 15 eastern lines; that the Missouri density of the Atchison, Topeka & Santa Fe is greater than that of 6 of the eastern lines; and that the density of the Wabash in Missouri is practically as heavy as that of the system as a whole.

In the *Eastern Live Stock Case* the respondents, including the Wabash, contended that regardless of the heavy density of general traffic in the eastern district as compared with the western district, they were entitled to higher rates on live stock moving between points in central freight association territory than applied in the western district because the density of that particular traffic was much greater in the western district. In the present case defendants, including the Wabash, are presenting exactly the converse

view and are urging that because the general density of all traffic is greater in central freight association territory than in Missouri, rates on live stock from Missouri points to East St. Louis should be greater than the *C. F. A. scale*. It was held in the *Eastern Live Stock Case* that comparisons of the densities of live-stock traffic and of all traffic were both pertinent, but that "the proper divergence in rates on the particular commodity in the two territories is less than that shown by the comparison of general traffic densities and rate structures." The record herein indicates that the density of live-stock traffic in Missouri is sufficiently greater than that in central freight association territory to offset the significance of the greater density of general traffic in central freight association territory than in Missouri.

In addition to the comparisons already discussed, a witness for the St. Louis-San Francisco presented an exhibit comparing the rates from Missouri points on that line to East St. Louis with the intrastate rates in Mississippi, Alabama, and Georgia. As there are no general markets for live stock in those states, and the number of head on their farms is only 538 per mile of road as compared with 1,074 head per mile of road in Missouri, it would appear that the movement therein is not comparable with that from Missouri points to St. Louis and East St. Louis. The record is silent as to the circumstances and conditions surrounding the traffic in those states, and also as to the general traffic density. For these reasons no weight can be given to the comparison as submitted.

Considering all the evidence submitted in respect thereto we are of the opinion that the present interstate rates from Missouri points to East St. Louis do not furnish the proper standard of reasonable rates for the future, nor the proper measure by which to remove the undue prejudice and disadvantage against East St. Louis in favor of St. Louis which is inherent in the present adjustment. As stated, these rates are not constructed upon any uniform basis either in respect to the percentage relationship of the different classes of live stock, or the respective levels from equidistant points on the different lines. They are higher than the average rates from and to points in the same general territory and higher in many instances than the *C. F. A. scale*. Of all the scales discussed, the latter scale more nearly approximates the standard of just and reasonable rates which must be prescribed in this case. We accordingly find that existing interstate rates from Missouri points to East St. Louis are unjust and unreasonable, and that the *C. F. A. scale* constitutes a reasonable maximum scale under such provisions for its application as are set forth hereinafter.

## PROPRIETY OF HIGHER RATES IN SOUTHERN THAN IN NORTHERN MISSOURI.

The state rates promulgated by the Railroad & Warehouse Commission of Missouri in 1904 were slightly higher, for distances over 50 miles, between points south of the main line of the Missouri Pacific from St. Louis to Kansas City than between points on and north of that line. In *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.*, 29 I. C. C., 600, 605, we declined to apply from St. Louis to Springfield, Mo., in the southern section of the state, the same scale of proportional class rates, applicable on traffic originating east of the Indiana-Illinois state line, as had been prescribed in the *Warnock Case*, 21 I. C. C., 546, from St. Louis and other Mississippi River crossings to Kansas City, St. Joseph, and other Missouri River cities, on the ground that the traffic density was lighter and the operating conditions less favorable, from St. Louis to Springfield and the southwest, than from Mississippi River crossings to Missouri River cities.

The defendants herein, operating lines in southern Missouri, contend that the interstate rates on live stock to St. Louis and East St. Louis should be on a somewhat higher basis from points in that section of the state than from points in the northern section. On the other hand, the assistant freight traffic manager of the Chicago, Burlington & Quincy, who is also the chairman of the committee of railroad traffic officers in charge of the preparation of evidence for the carriers in the *General Live Stock Investigation*, now pending, testified that the same basis of rates should apply throughout Missouri, Iowa, Wisconsin, and southern Minnesota. In the proceeding before the public service commission the southern Missouri carriers applied for a higher basis of rates in that section of the state than the northern Missouri carriers requested in the northern section of the state, but their application was denied. The public service commission strongly insists in this case that the same basis of rates should apply throughout the state. The complainants, being more interested in the relation of rates as between St. Louis and East St. Louis, are not much concerned about the relative bases in north and south Missouri.

Neither the alleged difference in operating conditions in the northern and southern sections of Missouri, nor the evidence submitted as to the relative costs per unit of traffic in the two sections demonstrates the propriety of different rate levels on the traffic here under consideration.

The relative cost of operation, however, is not the only factor to be considered. The density of traffic, both freight and passenger, is much heavier in the northern than in the southern section of the

state. The northern lines handled for the year ending June 30, 1914, 29.5 per cent more freight and 26.6 per cent more passengers, per mile of road, than the southern lines. Every one of the northern lines serves one or more of the large Missouri River cities, and this fact probably accounts, in part at least, for the heavier density of those lines. The live-stock traffic of the northern lines is greater than that of the southern lines to both St. Louis and East St. Louis. This fact is demonstrated by the following table in respect to the movement to East St. Louis:

*Receipts in cars at East St. Louis for the year 1916.*

	Northern lines.	Southern lines.
Chicago & Alton.....	9,278	.....
Chicago, Burlington & Quincy.....	14,428	.....
Chicago, Rock Island & Pacific.....	1,461	.....
Wabash (west).....	13,822	.....
Missouri Pacific.....	5,440	.....
Missouri, Kansas & Texas.....	5,834	.....
St. Louis, Iron Mountain & Southern.....	.....	4,467
St. Louis-San Francisco.....	.....	10,202
St. Louis-Southwestern.....	.....	792
Total.....	50,261	15,461

In the above table the Missouri Pacific and Missouri, Kansas & Texas have been considered northern lines for the reason that the live stock which they move to East St. Louis originates largely on their lines north of the main line of the Chicago, Rock Island & Pacific from St. Louis to Kansas City. A glance at the map will show that their lines in southern Missouri are not as tributary to the East St. Louis or St. Louis markets as to the Kansas City market. Thus divided, it appears that the northern lines handled over three times as many cars to East St. Louis as the southern lines.

In addition to the fact that the northern section of the state is more productive than the southern section, the northern section is bounded, as it were, on the west by the large Missouri River markets and on the north by the great stock-producing state of Iowa. On account of the "trying-the-market" privileges available at Missouri River markets on stock originating west thereof, and of the heavy direct purchases of stock thereat by eastern buyers, there is a heavy movement from those markets to St. Louis, East St. Louis, Chicago and other eastern points. The state of Iowa has 1,477 head of stock per mile of railroad, and from the southern part of that state there is some movement to East St. Louis. On the other hand, the southern section of Missouri is bounded on the west by Oklahoma and southern Kansas, and on the south by Arkansas. Oklahoma has only 593 head of stock per mile of railroad and Arkansas only 508.

In other words, as distances increase from East St. Louis to the northern section of the state, the traffic-producing possibilities become greater; to the southern section of the state, they become smaller.

Giving due weight to all the facts, we are of opinion and find that, for distances over 100 miles, interstate rates to East St. Louis from points in Missouri south of the main line of the Chicago, Rock Island & Pacific Railway from St. Louis to Kansas City may properly be higher than from equidistant points on or north of that line.

#### PROPRIETY OF ST. LOUIS-EAST ST. LOUIS DIFFERENTIALS.

As stated, complainants insist that the rates to East St. Louis and St. Louis should be the same. The only official representative of St. Louis present at the hearing, the traffic commissioner of the Business Men's League, testified that the two cities should be regarded as one commercial community and common rates applied thereto at least beyond a radius of 100 miles. The past practice of defendants has not been uniform in respect either to the differences in rates to the two markets or to the radius within which differences in rates obtained. Their position in this case is more or less indefinite. They made no suggestions as to what the difference should be, and from what radius it should apply. One of their witnesses stated that "there is little doubt that a common rate is necessary on live stock to St. Louis and East St. Louis, particularly in view of the fact that you have slaughterers on both sides of the river, and the rates to eastern territory from both east and west of the river are the same."

The situation of the different lines as regards entry into St. Louis and East St. Louis is not uniform. The Chicago, Burlington & Quincy handles its live-stock traffic from Missouri points to East St. Louis across the Mississippi River at Alton, Ill., about 20 miles from East St. Louis. The Chicago & Alton crosses the Mississippi River at Louisiana, Mo., 107 miles from East St. Louis. The St. Louis, Iron Mountain & Southern and St. Louis-Southwestern cross the Mississippi River at Thebes, Ill., 129 miles from East St. Louis. The other lines reach East St. Louis through the Terminal Railroad Association from St. Louis. On the other hand, the Chicago & Alton and St. Louis-Southwestern reach St. Louis through the Terminal Railroad Association from East St. Louis. The Chicago, Burlington & Quincy, Chicago & Alton, Wabash, and Missouri, Kansas & Texas cross the Missouri River to reach St. Louis. Practically all the lines cross numerous small rivers to reach both St. Louis and East St. Louis. Under a Missouri statute carriers are

prohibited from making any charge for crossing a river other than the regular distance rate. In a case involving precisely the same issues in respect to class rates as are presented herein in respect to rates on live stock, and in which the same situation as regards intervening rivers and bridges appeared, it was held that the "circumstances and conditions affecting transportation" were "substantially the same"; in other words, that the presence of the intervening rivers and bridges did not render such circumstances and conditions substantially dissimilar. *The Missouri River-Nebraska Cases*, 40 I. C. C., 201, 205, 210, 223, 261.

The stockyards in East St. Louis are located on the rails of the stockyards company's railroad, the Terminal Railroad Association, and the east side lines, i. e., lines reaching East St. Louis through Illinois. The east side lines, however, do not deliver stock direct to the unloading chutes but employ the stockyards' railroad to perform that service for them, for which they pay the stockyards company \$2 per car for switching and 50 cents per car for unloading the stock. The west side lines, i. e., the lines reaching East St. Louis through St. Louis, reach the East St. Louis stockyards through the Terminal Railroad Association, which delivers the stock to the unloading chutes with its own engines and crews. The Terminal Railroad Association charges the west side lines \$4 per car on cattle, calves, hogs, and sheep, and 3 cents per 100 pounds on horses and mules for this service, and the stockyards company charges the terminal association a trackage charge of 75 cents per car and an unloading charge of 50 cents per car.

The stockyards in St. Louis are located on the rails of the Terminal Railroad Association, Chicago, Burlington & Quincy, and Missouri, Kansas & Texas, but the two latter lines have no unloading chutes at the yards, and consequently all stock destined thereto is delivered by the Terminal Association. Its charge for this service when performed for the west side lines, ranges from \$1 per car and upward, dependent upon the location of its connection with the inbound carriers; and when performed for the east side line, the same switching charges that it assesses the west side lines for delivering stock to the East St. Louis stockyards.

The rates to East St. Louis include delivery to the stockyards and packing houses. The public service commission rates to St. Louis include delivery to the stockyards and packing houses. The position of that commission is that the road-haul carriers have combined their terminals in St. Louis and East St. Louis into a single operating arrangement under the name of the Terminal Railroad Association, and that therefore the terminal association should be regarded as the individual terminals of each of the constituent lines. It is not



deemed necessary to discuss the nature of that arrangement here, as it was fully explained in *U. S. v. Terminal R. R. Asso. of St. Louis*, 224 U. S., 383; and referred to in *The Illinois Coal Cases*, 32 I. C. C., 659, 677. In this connection it may be added that the transportation of live stock does not terminate until after the stock has been unloaded by the carrier into suitable pens. *Covington Stock Yards Co. v. Keith*, 139 U. S., 128; *United States v. Union Stock Yards*, 226 U. S., 286; *A. T. & S. F. Ry. Co. v. Kansas City Stock Yards Co.*, 38 I. C. C., 92, 99. The duty to unload stock into suitable pens includes the duty to provide such facilities and the means of reaching them, or else to hire those owned by others.

The charges of \$4 per car on cattle, calves, hogs, and sheep, and of 3 cents per 100 pounds on horses and mules, which the terminal association charges the west side lines for delivering stock to the East St. Louis stockyards, and the east side lines for delivering stock to the St. Louis stockyards, are the local switching charges between St. Louis and East St. Louis.

In consideration of the peculiar trans-Mississippi River situation of the various lines we are of the opinion that there should be no difference in the rates from the same Missouri points to East St. Louis and St. Louis, and that the rates to East St. Louis should be figured on basis of the distance thereto or to St. Louis, whichever is the shorter. To the rate applicable under the scale prescribed herein, however, the carriers will be permitted to add a charge of \$2.50 per car for delivery to the stockyards or packing houses.

#### RULES AND REGULATIONS INCIDENT TO THE RATES.

The complaint against the carload minima and against the rule regarding mixed carload shipments, being based upon the more liberal provisions under the statutory scale of rates applicable to St. Louis than under the interstate rates to East St. Louis, was satisfied on July 15, 1917, when the public service commission rates and rules became effective in Missouri. It is not deemed necessary, therefore, further to discuss those features of the case.

This is not true of the rule in respect to the return transportation of caretakers, the remaining subject of the supplemental complaint. On the intrastate rates to St. Louis, one man is passed each way if he accompanies one car of any kind of stock to market. On the interstate rates to East St. Louis, one man is passed each way if he accompanies one car of horses or mules to market, but is passed *to market* only if he accompanies one-car shipments of other kinds of stock. On shipments of two or more cars the intrastate and inter-



state rules are the same. The intrastate rule is based upon a statute of Missouri separate and distinct from that which prescribed intrastate rates on live stock. It was not affected by the going into effect of the public service commission rates.

It provides, among other things, that the carrier "in consideration of the shipper giving to such freight such care and attention as may be necessary in the course of shipment, by reason of the character of such freight, *and the release of the company from liability for damages for want of such care and attention* pass the shipper or his employee from the point of shipment to the point of destination on the same train with such freight, and, also, shall pass such shipper or employee from the destination of such freight to the point of origin thereof, without further expense to the shipper." *Section 3122 of Revised Statutes of Missouri, 1909.* Such a release, if applied on interstate traffic, would be in violation of the so-called Cummins amendment to the act to regulate commerce, and therefore void.

The position of the public service commission on this question, as expressed by its chief rate expert at the hearing, is that the free transportation of caretakers is "in no way aligned or connected with the rates," and that "the Interstate Commerce Commission has no power under the act to regulate commerce to relieve the carriers from the burdens imposed upon them by law with reference to live stock," and that "if the Commission saw fit to remove this discrimination \* \* \* they could not relieve the carriers from liability, if they saw fit to remove it, by prohibiting it in Missouri." It is stated that such procedure "would be interfering with a right which belongs wholly to the state of Missouri in so far as its local transportation is concerned." Whether the provision for the interstate transportation of caretakers be regarded as a mere incident of the rates, or as a practice or regulation affecting the rates, or as a matter "relating to or connected with the \* \* \* transportation \* \* \* of property subject to the provisions of the act," it is obviously subject to the act and to the regulation of this Commission. Section 1 requires all such regulations or practices to be just and reasonable. Section 3 makes it unlawful for any interstate common carrier "to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality or any particular description of traffic, *in any respect whatsoever*, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage *in any respect whatsoever*." This all-embracing prohibition extends to any and all acts, rates, regula-

tions, or practices by which the forbidden result is brought about. As stated by the Supreme Court of the United States in *Houston & Texas Ry. v. United States*, 234 U. S., 342, 356, the so-called *Shreveport Case*:

This language is certainly sweeping enough to embrace all the discriminations of the sort described which it was within the power of Congress to condemn. There is no exception or qualification with respect to an unreasonable discrimination against interstate traffic produced by the relation of intrastate to interstate rates as maintained by the carrier. It is apparent from the legislative history of the act that the evil of discrimination was the principle they aimed at, and there is no basis for the contention that Congress intended to except any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach.

Substantially the same rule regarding the return transportation of caretakers accompanying one-car shipments of live stock to market as now applies from Missouri points to East St. Louis also applies from Missouri points to Kansas City, St. Joseph, and Chicago; from Iowa points to St. Louis-East St. Louis, Kansas City, St. Joseph, and Chicago; from Illinois points to Chicago and East St. Louis; from Kansas and Nebraska points to Kansas City, St. Joseph, Omaha, Chicago, and East St. Louis; and from Oklahoma and points in other southwestern states to Kansas City, St. Joseph, Wichita, and East St. Louis. In other words, the present rule to East St. Louis is the common rule throughout this territory. One way to determine the fairness and reasonableness of a rule or practice of this character is to compare it with similar rules or practices in the same general territory.

#### CONCLUSIONS.

Upon consideration of all the facts of record we find and conclude:

(1) That the present rates on live stock, in carloads, from points on the lines of defendants in the state of Missouri to East St. Louis and National Stock Yards, Ill., are and for the future will be unjust and unreasonable to the extent that they exceed the following distance scale of maximum rates, subject to the rules indicated.

Single-line distance rates, in cents per 100 pounds, on cattle and calves, hogs, double-deck, and sheep, double-deck, for application from points in Missouri on and north of the main line of the Chicago, Rock Island & Pacific Railway from St. Louis, Mo., to Kansas City, Mo. Rates on hogs, single-deck, and on horses and mules to be 120 per cent, and on sheep, single-deck, 125 per cent, respectively, of these rates.

By "single line" is meant one line of railroad or two or more lines of railroad under the same management or control.

Miles.	Rate.	Miles.	Rate.
	Cents.		Cents.
5 and less.....	5.50	180 and over 170.....	14.00
10 and over 5.....	6.00	190 and over 180.....	14.25
15 and over 10.....	6.50	200 and over 190.....	14.50
20 and over 15.....	7.00	210 and over 200.....	14.75
30 and over 20.....	7.50	220 and over 210.....	15.00
40 and over 30.....	8.00	230 and over 220.....	15.25
50 and over 40.....	8.50	240 and over 230.....	15.50
60 and over 50.....	9.00	250 and over 240.....	15.75
70 and over 60.....	9.50	260 and over 250.....	16.00
80 and over 70.....	10.00	270 and over 260.....	16.25
90 and over 80.....	10.50	280 and over 270.....	16.50
100 and over 90.....	11.00	290 and over 280.....	16.75
110 and over 100.....	11.50	300 and over 290.....	17.00
120 and over 110.....	12.00	310 and over 300.....	17.25
130 and over 120.....	12.50	320 and over 310.....	17.50
140 and over 130.....	13.00	330 and over 320.....	17.75
150 and over 140.....	13.25	340 and over 330.....	18.00
160 and over 150.....	13.50	350 and over 340.....	18.25
170 and over 160.....	13.75		

Rule 1. Single-line distance rates from points in Missouri, south of the above-described line, to East St. Louis and National Stock Yards, Ill., shall not exceed the rates contained in the above table for all distances to and including 100 miles; not more than 5 per cent shall be added to said single-line rates for all distances over 100 miles to and including 200 miles; and not more than 10 per cent thereto for all distances over 200 miles.

Rule 2. To make rates over two or more lines, from points in Missouri now having joint through rates to East St. Louis or National Stock Yards, Ill., add 2 cents per 100 pounds to the through single-line rates.

Rule 3. For delivery to the stockyards or packing houses in East St. Louis or National Stock Yards, Ill., not more than \$2.50 per car may be charged in addition to the rate applicable under the above scale.

(2) That, as against the rule regarding the return transportation of caretakers accompanying one-car shipments of cattles, calves, hogs, and sheep, published and applied by defendants in connection with the rates from points on their respective lines in Missouri to St. Louis, Mo., the rule regarding the return transportation of caretakers accompanying one-car shipments of said live stock now published and applied by defendants in connection with the rates from points on their respective lines in the state of Missouri to East St. Louis and National Stock Yards, Ill., is just and reasonable.

(8) That defendants publish, maintain, and apply higher rates on live stock, in carloads, from points on their respective lines in the state of Missouri to East St. Louis and National Stock Yards, Ill., than they contemporaneously publish, maintain, and apply from points on their respective lines in the state of Missouri to St. Louis, Mo., for transportation under substantially similar circumstances and conditions, and that they thereby give undue and unreasonable

preference and advantage to St. Louis, Mo., and subject East St. Louis and National Stock Yards, Ill., to undue and unreasonable prejudice and disadvantage.

(4) That, in connection with the rates on cattle, calves, hogs, and sheep, in carloads, from points on their respective lines in the state of Missouri to St. Louis, Mo., defendants publish, maintain, and apply a rule under which they pass one man each way, if he accompanies one carload of said live stock to market; whereas in connection with the rates on said live stock, in carloads, from points on their respective lines in the state of Missouri to East St. Louis and National Stock Yards, Ill., they publish, maintain, and apply a rule under which they pass one man one way only, i. e., from point of origin to destination, if he accompanies one car of said live stock; and that thereby they give an undue and unreasonable preference and advantage to St. Louis, Mo., and subject East St. Louis and National Stock Yards, Ill., to undue and unreasonable prejudice and disadvantage.

(5) That an order should be entered requiring said defendants, according as they participate in the transportation, (a) to cease and desist, on or before February 15, 1918, and thereafter to abstain, from publishing, demanding, or collecting their present rates on live stock, in carloads, from points on their respective lines in the state of Missouri to East St. Louis and National Stock Yards, Ill., in so far as said rates exceed the scale of maximum rates subject to the rules set forth in paragraph 1, *supra*; (b) to establish upon statutory notice and to maintain and apply on live stock, in carloads, from points on their respective lines in the state of Missouri to East St. Louis and National Stock Yards, Ill., rates which shall not exceed the scale of maximum rates subject to the rules set forth in paragraph 1, *supra*; (c) to cease and desist from giving any undue and unreasonable preference or advantage in rates on live stock, in carloads, from points on their respective lines in the state of Missouri to St. Louis, Mo., and from subjecting East St. Louis and National Stock Yards, Ill., to undue and unreasonable prejudice or disadvantage in respect to said rates; (d) to cease and desist from giving any undue and unreasonable preference or advantage to St. Louis, Mo., in respect to the rule regarding the return transportation of caretakers accompanying one-car shipments of cattle, calves, hogs, and sheep thereto; and from subjecting East St. Louis and National Stock Yards, Ill., to undue and unreasonable prejudice or disadvantage in respect to said rule.

Such an order will be entered.

COMMISSIONERS AITCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.

**INVESTIGATION AND SUSPENSION DOCKET No. 1027.**  
**HANDLING OF HEAVY ARTICLES.**

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*Submitted October 10, 1917. Decided November 21, 1917.*

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Proposed increased charges for delivering heavy articles by lighter at New York, N. Y., justified.

*Walter J. Larrabee, Charles R. Webber, Henry Adams, George R. Allen, and Charles E. Miller* for respondents.

*Charles Conradis and Arthur B. Hayes* for Indiana Limestone Quarrymen's Association; *Michael Cohen* for Indiana Limestone Association of New York; *John T. Hettrick* for Greater New York Cut Stone Contractors' Association; and *Charles S. Belsterling* for United States Steel Corporation and subsidiary companies, protestants.

**REPORT OF THE COMMISSION.**

**McCHORD, Commissioner:**

The facts stated in the following paragraphs were made the subject of a proposed report and no substantial changes have been found to be necessary upon a review of the exceptions filed and the argument thereon.

What is known as the New York rate group embraces not only the city of New York, but the northern part of the state of New Jersey, points along the Hudson River almost as far north as Albany, N. Y., and points on Long Island as far east as Jamaica. As a general rule the rail carriers serving this territory will deliver freight at any point in the rate group without imposing any charges in addition to the New York rates. Because of the peculiar terminal conditions at New York it is necessary for the railroads serving the port to employ lighters and car floats in transferring freight from their terminals to the various points of delivery along the shore of the harbor. With certain important exceptions to be noted later, delivery by lighter or car float is made without any additional cost to the shipper. The rail carriers own and operate lighters and car floats, but not in sufficient numbers to handle all the tonnage offered, and it is their practice to employ independent lighterage companies to deliver part of the traffic. The latter are commonly referred to as "outside companies," and for convenience will be so designated

in this report. For delivering the general run of lighterage traffic the outside companies have for years received from the rail carriers a published allowance for this service, usually 60 cents per ton, and the eastern carriers deduct that amount from the through rates to cover the terminal service before prorating with their western connections.

For the lighterage of articles weighing more than 3 tons each additional allowances, varying with the weight, are paid to the outside companies and additional charges are imposed upon shippers. Articles weighing over 3 tons can be handled only by large "steam-hoist" lighters. Only three of the respondents, the New York Central, the Delaware, Lackawanna & Western, and the Central Railroad of New Jersey, own a sufficient number of these larger boats to handle a substantial part of the heavy articles transported over their lines. The other carriers, including the Pennsylvania, the Erie, the Lehigh Valley, and the Baltimore & Ohio, depend almost entirely upon the outside companies for handling their heavy articles, and even the carriers owning steam-hoist lighters rely in part upon the outside companies for this service.

The extra charges at present imposed upon shippers for the lighterage delivery of articles weighing more than 3 tons are as follows: Pieces weighing from 3 to 20 tons, 40 cents per ton; from 20 to 30 tons, 65 cents; from 30 to 35 tons, \$1.15; from 35 to 40 tons, \$1.90; from 40 to 45 tons, \$2.40; and from 45 to 50 tons, \$2.90. These charges are superimposed upon the New York rates, and inasmuch as the latter are generally understood to contain an allowance of 60 cents per ton deducted by the terminal lines for the lighterage service before prorating with connecting carriers, as previously explained, the extra charges given above should be increased by 60 cents to determine the total charges assigned to the terminal service and paid as allowances to the outside companies. Thus, for delivering a 5-ton piece of structural steel, the extra charge for which is 40 cents per ton, the outside companies receive \$1 per ton; and for delivering a 25-ton piece, the extra charge for which is 65 cents per ton, they receive \$1.25.

In the present proceeding the rail carriers propose to increase the extra charges for lightering heavy articles, with corresponding increases in the allowances to the outside companies, as indicated in the following table:



Weight of single pieces.	Present extra charge per ton.	Present allowance per ton. <sup>1</sup>	Proposed extra charge per ton.	Increased allowance per ton. <sup>1</sup>
Up to 3 tons.....	Free.	\$0. 00	Free.	\$0. 00
3 tons to 20 tons.....	\$0. 40	1. 00	\$0. 40	1. 00
20 tons to 30 tons.....	. 65	1. 25	1. 40	2. 00
30 tons to 35 tons.....	1. 15	1. 75	1. 40	2. 00
35 tons to 40 tons.....	1. 90	2. 50	<sup>2</sup> 1. 40	<sup>2</sup> 2. 00
40 tons to 45 tons.....	2. 40	3. 00	2. 90	3. 50
45 tons to 50 tons.....	2. 90	3. 50	2. 90	3. 50

<sup>1</sup> As is elsewhere indicated in the report the increased allowances are now being paid to the independent lighterage companies by some of the respondents.

<sup>2</sup> Reduction.

No protest was made at the hearing against these increases. The protestants object solely to a further proposal of the respondents to cancel an exception in the present tariffs reading as follows:

When a lighterage order from one shipper or consignee covers delivery of 50 tons or more at one time from one harbor point for one harbor destination, or when the freight charges on a shipment from one shipper to one consignee are assessed on a minimum of 50 tons, no extra charge will be made for single pieces weighing 20 tons or less; otherwise the foregoing rates will apply.

Shipments of structural iron and steel and of Indiana limestone to New York are almost invariably made in lots of more than 50 tons to one consignee and the individual pieces usually weigh less than 20 tons. By virtue of the above exception, therefore, shippers of these commodities, which are used in New York in large quantities, have avoided the payment of the extra charges shown in the preceding table. If the exception were canceled, as now proposed, shipments of these commodities, regardless of the quantity offered, would be subject to the additional charge of 40 cents per ton shown in the table for the lighterage delivery of pieces weighing from 3 to 20 tons. It will be noted that it is not proposed to increase this 40-cent charge, but to apply it uniformly by canceling the exception regardless of the size of the shipment. The protestants represented at the hearing are the Indiana Limestone Quarrymen's Association, Indiana Limestone Association of New York, Greater New York Cut Stone Contractors' Association, and the United States Steel Corporation and its subsidiaries. These protestants are interested solely in the withdrawal of the exception as it affects the charges for the transportation of limestone and structural iron and steel, and they express of record their willingness to pay the increased charges on the individual pieces when offered in lots of less than 50 tons. They are also willing to pay the increased charges on pieces weighing over 20 tons, which are not covered by the exception. The operation of the schedules in question was suspended by appropriate orders until December 15, 1917.

The exception in question was incorporated in the tariffs of the rail carriers in 1908 because the outside companies indicated at that

47 I. C. C.



time their willingness to deliver articles weighing less than 20 tons for the usual allowance of 60 cents per ton, if offered in lots of at least 50 tons for one delivery. On July 21, 1916, 18 of the outside companies made a joint demand in writing upon the rail carriers for an increase from 60 cents to \$1 in the lighterage allowance. It is said that only three of the outside companies have suitable equipment for handling heavy articles. On May 3, 1916, one of them, the Merritt & Chapman Derrick & Wrecking Company, which handles heavy articles for a number of the respondents, and which performs nearly all of the Pennsylvania Railroad's heavy lighterage, notified the chairman of the lighterage and terminal committee of the respondents that "in view of the great increase in operating expenses occasioned by the recent advance in cost of coal, crews' wages, towages, repairs, and all supplies," it proposed to increase its lighterage charges to the amounts shown in the preceding table. The Baltimore & Ohio Railroad has been paying the increased allowances since August, 1916, the New Jersey Central and the New York Central since February, 1917, and the Pennsylvania for a still longer period, and they are now being paid by all the respondents. In the case of articles weighing from 3 to 20 tons, when offered in lots of at least 50 tons for one delivery, the allowance now paid is \$1 per ton, all of which is being absorbed by the rail carriers out of the New York rates. They propose in this proceeding to shift a portion of this burden to the shippers, the respondents to absorb only 60 cents per ton, which, as already explained, is the amount usually absorbed on ordinary lighterage freight, the balance of 40 cents per ton to be borne by the shippers.

As previously indicated, the joint demand of the outside companies for greater allowances was based principally upon the increased cost of performing the lighterage service, and a large part of the evidence of record is addressed to operating costs. That there has recently been a substantial increase in the cost of almost every item entering into the lighterage operation is shown by the evidence. The following statement, filed by a representative of the Merritt & Chapman Derrick & Wrecking Company, shows how the wages now paid by that company compare with those paid in 1915:

Class of labor.	Wages in 1915.	Wages in 1917.
Deck hands.....per month.	\$45.00	\$60.00
Captains.....do.....	75.00	95.00
Engineers.....do.....	75.00	95.00
Gauntline men.....do.....	50.00	65.00
Boiler makers.....per day..	3.50	4.25
Ship carpenters.....do.....	3.75	4.25
Ship coilers.....do.....	3.75	4.25

The cost of workmen's compensation insurance, which was \$1.50 per \$100 of pay roll in 1914, was \$3.674 at the time of the hearing and was to be advanced June 1, 1917, to \$6.04.

That there has been a corresponding increase in the cost of the supplies commonly used by lightermen is also shown. This is indicated by the following, taken from one of the exhibits:

Commodity.	Cost in 1915.	Cost in 1917.
Coal.....per ton..	\$3.15	\$5.50
Cotton waste.....per pound..	.07	.13
Chains.....do.....	.07	.12
Boiler plates.....do.....	.02	.18
Boiler rivets.....do.....	.03	.08
Boiler tubes.....per foot..	.20	.50
Ship plates.....per pound..	.02	.07
Yellow pine.....per M..	\$35-40	\$55-60
Greases.....per pound..	.15	.18-.20
Oakum.....per bale..	6.00	7.75
Paints.....per gallon..	.96	1.40
Canvas duck.....per yard..	.20	.34

There is much other evidence of record with reference to the increased cost of the various articles used in the construction, repair, and operation of the floating equipment of the lighterage companies, but it is deemed unnecessary to reproduce it in detail in this report.

Since articles weighing less than 3 tons are entitled to "free lighterage," whereas those weighing 3 tons or more are subject to extra charges, much of the evidence has been addressed to the relative cost of delivering the two classes of traffic. For the lighterage delivery of ordinary merchandise, as distinguished from the heavy articles, small and comparatively inexpensive lighters are used. These are described on the present record as merely "large boxes, with wooden sides, wooden ends, wooden bottom and wooden deck, with a wooden or iron mast and gaff." The "crew" consists of one or two men, and the hoisting is done by hand. As a general rule, these boats can not handle articles weighing more than 3 tons, which can be delivered only by large "steam-hoist" lighters, colloquially called "derricks." These have an inner construction of steel, are equipped with a heavy iron mast and boom, and carry a crew of from 5 to 8 men, including a captain and a licensed engineer. The cost of such a lighter, with a lifting capacity of 20 tons, is \$40,000. Those with a lifting capacity of 40 tons are worth from \$55,000 to \$60,000. On these boats the hoisting machinery is operated by steam. The cost of towage, which is one of the most important items of expense, is considerably greater for the steam-hoist lighters than for the others. The items of insurance and depreciation are also greater for the larger boats. Moreover, the heavy articles are offered for transportation in so much smaller volume than ordinary merchandise that

47 I. C. C.

the more expensive boats, specially equipped for handling the heavy commodities, must lie idle part of the time. For this reason, and because of the expense incident to their operation, there are comparatively few of these larger vessels in the harbor. Thus, the Pennsylvania Railroad, which owns and operates a fleet of nearly 200 lighters, does not own a single boat with a lifting capacity of more than 10 tons. The New York Central has only 8 lighters with a capacity of 10 tons or more, and these are used principally as stationary derricks in unloading freight from cars. We have already observed that only three of the outside companies are provided with these larger boats. The average capacity of lighters is from 200 to 500 tons, but some of the largest boats can carry 900 or 1,000 tons.

The evidence with respect to the cost of the lighterage service is unsatisfactory, in part because of the inherent difficulty of arriving at an accurate determination of the cost, and in part because of the uncertainty, ambiguity, and incompleteness of some of the testimony and exhibits of respondents' witnesses. It is believed, however, that a brief résumé of this evidence, unsatisfactory though it is, will be helpful in determining the issue presented.

The representative of the Merritt & Chapman Derrick & Wrecking Company, whose testimony has already been referred to, introduced in evidence a statement describing 44 lighter loads of articles weighing up to 20 tons, delivered by that company for the Pennsylvania Railroad during the period of six months from November 1, 1916, to May 1, 1917. The shipments included 4 cars of generator parts, 6 cars of transformers, 3 carload shipments of one lathe each, 23 carloads of locomotive machinery and parts, 41 cars of "machinery," 2 cars of granite, 2 cars of marble, 8 cars of structural steel, and one or more shipments of motor parts, rudders, castings, boilers, etc. This list gives an idea of the miscellaneous character of the commodities affected by the tariff item under consideration; and it should be observed in this connection that no protests are made except on behalf of shippers interested in the transportation of stone and structural iron and steel. The total weight of the 44 loads was 5,122,279 pounds, making an average of 116,415 pounds, or 58.2 net tons per load. The total allowances received by the Merritt & Chapman Company for the delivery of these shipments were \$2,667, including \$240 for demurrage. The average allowance per lighter load, not including the demurrage, was \$55.16. The total cost of the delivery service was \$4,684.66, making an average cost of \$106.47 per load, or \$1.83 per net ton. The cost of lightering each shipment was determined by ascertaining the cost of the boat used for the actual number of days employed in making each delivery, the cost for one day being arrived at by taking the total cost of operation for one year, including interest

on investment, and dividing by the number of working days. The cost of towage and other special items was then added. It will be noted that the lighterage company lost \$2,017.66 on these shipments, according to the figures, and that the average cost of the service exceeded by 83 cents per net ton the allowance of \$1 now paid by the respondents. One of the protestants criticizes the statement because it shows only that the articles in question weighed "up to 20 tons," without stating what percentage weighed over 3 tons. We may safely assume, however, that most of the articles exceeded 3 tons in weight, not only because of their nature, but because there are included in the statement all heavy articles which the Merritt & Chapman Company delivered for the Pennsylvania during the six months' period covered by the exhibit. As a general rule, the Merritt & Chapman Company does not use its steam-hoist lighters for the delivery of ordinary merchandise.

It may be said with confidence that the average cost per ton of lightering ordinary merchandise is considerably less than the cost of \$1.83 given above. A comparatively recent study made by the Baltimore & Ohio Railroad showed the average cost of all its general lighterage during a typical month to be \$1.07 per ton. The fact that a large part of the general merchandise traffic is handled by the railroads and by the outside companies for approximately 60 cents per ton also indicates that the cost of delivering that traffic is much less than the average cost of delivering all kinds of heavy articles.

Evidence submitted by a witness for the New York Central Railroad, which handles a large quantity of limestone, indicates that the cost of its heavy lighterage traffic is considerably in excess of the allowance of \$1 per ton paid to the outside companies. This witness testified that at the present time it requires an average of five days for the New York Central's lighters to make a round trip, and that even under favorable conditions a lighter can not average more than seven round trips per month. The average lighter load carried by the boats of this company is 100 tons. Although the evidence is conflicting, it is probably safe to say that the use of one of the expensive steam-hoist lighters for one day is worth from \$25 to \$50, at a conservative estimate. Even using the lower estimate we must figure \$125 for the use of the boat for five days, making \$1.25 per ton for a 100-ton load; but this does not allow for the cost of towage, which is an important item, or for the cost of loading and unloading, which is approximately 25 cents per ton. These figures probably explain why the New York Central finds it advisable to use its own heavy lighters as stationary derricks in unloading freight from cars at its Sixtieth street yard. A further explanation lies in the fact that shippers are permitted to designate the lighterage company to de-

47 I. O. O.

liver their heavy articles. It is said that the choice loads are frequently given to an outside company whom the shipper desires to favor, the less profitable business being left to the railroads. Another advantage enjoyed by the outside companies is that they are free to handle nonrailroad business at such rates as may be agreed upon by private contract, and the earnings on this traffic are sometimes materially in excess of those derived from delivering freight for the respondents at the published rates.

The cost per ton of lightering limestone and structural iron and steel is less than the average cost for the heavy articles generally because of the heavier loading of those commodities. Indiana limestone is ordinarily shipped to New York in lots of from two to eight cars for one consignee. It is a relatively low-grade commodity, the freight charges per car from Indiana to New York usually exceeding the value of the shipment. An exhibit filed on behalf of the Merritt & Chapman Company shows nine representative loads of stone delivered by that company. The average weight per load was 175.6 tons, the average allowance 99 cents per ton, and the average cost of lighterage 93.5 cents per ton. The latter figure is based on the most satisfactory evidence of record with respect to the cost of lightering stone and should be compared with the proposed total allowance of \$1 per ton. At the time of the hearing the Merritt & Chapman Company was lightering imported stone and marble from steamer to yard and from yard to yard at a rate of 80 cents per ton, but it was stated that this was to be increased to \$1 per ton effective July 1, 1917. In the case of traffic handled from steamer to yard the lighterage companies receive an additional allowance of 80 cents per ton for hoisting the commodity out of the hold of the vessel, making the total allowance \$1.60 per ton.

A witness for the New York Central expressed the view that it would be practicable to make an exception of stone because of its heavy loading; but he was careful to state that this was only his personal view, and witnesses for the other carriers did not express that opinion. The limestone interests would agree to a minimum of 100 tons per load if no charge were imposed in addition to the New York rate. Inasmuch as the average lighter load of limestone is materially in excess of 100 tons, an increase in the minimum weight to that figure would not operate to increase substantially the respondents' earnings on this traffic.

Like limestone, structural iron and steel load heavily, move in large quantities, and are not easily damaged. In *Lighterage and Storage Regulations at New York*, 35 I. C. C., 47, the carriers proposed certain increases in the charges for lightering heavy articles and to restrict the application of the exception, whereby pieces weigh-



ing less than 20 tons are carried without extra charge if offered in lots of 50 tons or more, to shipments of marble and stone. In discussing that feature of the case the Commission said:

We also conclude from the record that the proposed exception in favor of shipments of marble and stone is not justified, as shipments of iron and steel, and possibly of other commodities, are as quickly and economically handled as those of marble or stone, and are also less liable to damage.

A portion of the testimony in that case, filed as an exhibit in the present record, shows that the transportation conditions surrounding the transportation of heavy iron and steel articles on the one hand, and heavy stone on the other, are so similar that it would be inadvisable to distinguish between them with respect to the lighterage charges.

From the limestone quarries in Indiana is obtained more than 75 per cent of all the limestone produced in the United States. Indiana limestone constitutes over 90 per cent of the total limestone consumed in the New York market, where it competes with marble, granite, and terra cotta. These are usually shipped in finished form, in small slabs or pieces, and are lighterage without extra charge. Indiana limestone, on the other hand, is always shipped to New York in rough blocks averaging about 10 tons in weight, and would therefore be subject to the increased charges here proposed. Competition between these various commodities is assigned by the protestants as one reason for disapproving the cancellation of the exception. The evidence also shows that some of the stoneyards in the vicinity of New York are located on the lines of a rail carrier, and stone consigned to those yards would escape the extra lighterage charges. It is said that one-third of all the limestone shipped to New York is delivered at rail sidings.

It is the opinion of the limestone interests on whose behalf the protest was made that the respondents' earnings on the limestone traffic are sufficiently high to permit them to absorb not only the former allowance of 60 cents per ton, but the increased allowance of \$1 now being paid to the outside companies. The rate on limestone from Bedford to New York at the time of the hearing was 29.3 cents per 100 pounds, or \$5.86 per net ton. If \$1 is absorbed for the lighterage service, the net revenue for the line haul is \$4.86 per net ton. Assuming the distance from Bedford to New York to be 917 miles, the line-haul revenue per ton-mile is 5.3 mills, and the revenue per car-mile, based on an average loading of 45 tons, is 23.8 cents.

Comparatively little evidence has been addressed to the charges proposed for the lighterage of articles weighing over 20 tons, but such evidence as is before us indicates that the proposed charges are not excessive. The protestants, interested only in the transportation

of stone and structural iron and steel, express of record their willingness to pay the increased charges on pieces weighing more than 20 tons. An exhibit filed by respondents shows that the average cost of lightering 22 loads containing articles weighing from 20 to 40 tons was \$1.76 per ton. The proposed extra charge is \$1.40 per ton. The evidence showing the increased cost of labor and supplies should also be considered in gauging the reasonableness of these charges.

In determining the issue presented in this proceeding the Commission has given consideration to the general terminal problem at the port of New York, and especially to the competition between the trunk lines for New York traffic. Because New York is the leading manufacturing city of the country, and by far the largest port, there is keen rivalry between the nine trunk lines serving it. A peculiar feature of the situation at the port is the accessibility of the terminals of the trunk lines to industries located in all parts of the harbor. Thus, a manufacturer located on the property of the Bush Terminal Company on the Brooklyn shore has convenient access, because of the lighterage service, to the terminals of all the trunk lines; and when it is considered that the rail carriers have fleets of small lighters with which they can compete for the general merchandise traffic offered in all parts of the harbor, it is not surprising that the competition has brought to a common level the rates of transportation published by all of the carriers, or that a part of the cost of the terminal service is absorbed out of the through rates.

This competition does not exist to the same extent with respect to the transportation of heavy articles. The evidence already referred to shows that only three of the respondents are equipped to handle such articles, and that even they depend in part upon the facilities of lighterage companies specially equipped for this service. In the brief filed on behalf of the limestone interests it is stated that the respondents' inability to handle heavy articles with their own equipment "puts the carriers at the mercy of outside handlers, some of whom have no tariffs filed with the Interstate Commerce Commission." The dependence of the rail carriers upon the outside companies is one of the essential features of this situation, and its importance is not diminished by the suggestion that the respondents should provide their own facilities for this work. Even if each of the carriers should supply itself with a number of the large steam-hoist lighters the uncontradicted evidence is that they would lie idle part of the time, and in view of the present conditions in the ship-building industry such boats could be obtained only at prohibitive prices and after long delay.



The protestants contend that the line-haul rates on heavy commodities should include their delivery, and that it is incumbent upon the respondents as a matter of law to show the increased rates, as distinguished from the increased terminal charges, to be just and reasonable. While it is generally true, as we have frequently observed, that the published transportation rates in this country cover receipt, transportation, and delivery, this has not been construed, and may not properly be construed, as preventing the publication of separate terminal charges for peculiar terminal services. In *New England Coal & Coke Co. v. N. & W. Ry. Co.*, 33 I. C. C., 276, in discussing the propriety of a separate charge for dumping coal from cars to boats at Norfolk and Newport News, Va., the Commission said:

There is nothing in the act which prohibits the separate publication of charges for services of this kind. It is specifically provided in section 6 that the schedule shall "state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require," as well as "any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such aforesaid rates, fares, and charges, or the value of the services rendered \* \* \*." The plain intent of the whole section is that all matters which enter into or aid in determining the whole or any part of the charge imposed by the carrier for the service rendered shall be so published that they may be plainly and unmistakably ascertained by the public. The separate publication of charges of this kind not only makes possible a more accurate allocation of the carriers' revenue and expenditures, but removes the uncertainty sometimes occasioned by imposing a blanket charge for a number of services of different kinds.

In a sense the tariff exception with which we are here dealing is an anomaly. If additional charges are imposed in all instances on pieces weighing over 20 tons—and the protestants express their willingness to pay such charges—there seems to be no reason for requiring the respondents to absorb the whole cost of lighterage on articles weighing from 3 to 20 tons when offered in lots of 50 tons. Again, if pieces of stone and structural iron weighing from 3 to 20 tons are carried without extra charge to the shipper when offered in lots of 50 tons, it would seem logical to make similar provision for 50-ton lots of locomotive parts, machinery, lathes, boilers, and other heavy articles, yet no shippers interested in the transportation of these other commodities appeared at the hearing to oppose the cancellation of the exception, although those commodities are sometimes offered in lots of more than 50 tons. Furthermore, it is shown that the principal reason for the original incorporation of the exception in the tariffs, if not the only reason, was the willingness of the outside companies to perform this service without extra charge. Their recent demands for increased allowances, justified by substantial in-

47 I. C. C.

creases in the cost of the lighterage service, show that the reason for the exception no longer exists. Wholly apart from such considerations as these is the broader question whether the cost of an unusual and expensive terminal service, performed with special equipment not owned by the respondents, should be absorbed by them. Unless the transportation rates were made to include such special service it is clearly not incumbent on the carriers to absorb these costs out of their revenues. The fact that the exception was first published in 1908, and then only because the outside companies agreed to perform the heavy lighterage without extra charge, shows that the transportation rates were not made to include the cost of this service.

At the risk of repetition attention is called to the fact that the proposed charge for lightering articles weighing from 3 to 20 tons is the same as the present charge, 40 cents per ton. Not even the protestants contend that the lighterage service can be performed at a cost even approximately as low as that figure. In addition to this sum there is paid to the outside companies the additional sum of 60 cents absorbed by the respondents out of the New York rates, making the total allowance \$1 per ton. Inasmuch as this allowance is now being paid by several of the respondents, they are now absorbing \$1 per ton on all traffic to which the exception applies. The respondents ask, in effect, that they be required to absorb only 60 cents of the allowance, and that 40 cents be borne by the shippers. The protestants ask, on the other hand, that the whole allowance of \$1 be borne by the rail carriers. In the light of the evidence of record in this proceeding the conclusion can not be reached that this whole burden should fall upon the respondents, nor can it properly be contended that the carriers are unreasonable in asking the shipping public to bear 40 per cent of the terminal cost. This statement is not to be interpreted as meaning that it is incumbent upon the respondents to continue the absorption of 60 cents per ton out of the transportation rates, for that question is not presented for determination upon this record.

We find that the proposed increased charges are justified, and an order will be entered vacating the orders of suspension.

COMMISSIONER ANDERSON did not participate in the disposition of this case.

INVESTIGATION AND SUSPENSION DOCKET No. 956.<sup>1</sup>  
LIVE STOCK CLASSIFICATION.

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*Submitted October 22, 1917. Decided November 28, 1917.*

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1. Proposed increased ratings on live stock in less than carloads in official and southern classification territories found not justified, and suspended schedules required to be canceled, but respondents authorized to establish new minimum weights and ratings on the traffic in question.
2. In view of the amended Cummins amendment, carriers in official classification territory required to cancel certain proposed schedules which provide rates on ordinary live stock dependent upon value.
3. Finding in *National Society of Record Assos. v. A. & R. R. R. Co.*, 40 I. C. C., 347, respecting minimum weights in official and southern classification territories, modified and the order therein vacated and set aside in so far as it pertains to minimum weights on less-than-carload live stock and to standard or basic values on ordinary live stock.

*William W. Collin, jr.*, for official classification lines; *D. P. Connell* for New York Central lines; *R. Walton Moore* and *Edward H. Hart* for southern classification lines; and *William Burger* for Louisville & Nashville Railroad Company.

*Cassoday, Butler, Lamb & Foster* by *William E. Lamb*, *Karl D. Loos*, and *C. R. Hillyer* for National Society of Record Associations; *R. D. Rynder* for Swift & Company; *H. K. Crafts* for Armour & Company; *C. B. Heinemann* for National Live Stock Exchange; and *Borders, Walter & Burchmore* and *H. R. Park* for Morris & Company.

REPORT OF THE COMMISSION.

WOOLLEY, *Commissioner*:

The carriers in official and southern classification territories in the schedules under suspension propose to increase their ratings on live stock in less than carloads from generally first class to double first class. The lines in official classification territory also propose new standard or basic values to be used in assessing charges on ordinary live stock in carloads. We will deal first with the schedules affecting the less-than-carload traffic.

In *National Society of Record Assos. v. A. & R. R. R. Co.*, 40 I. C. C., 347, decided June 29, 1916, and hereinafter referred to as the *National Society Case*, the following minimum weights were

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<sup>1</sup> The report also embraces a reconsideration in part of No. 6825, *National Society of Record Associations et al. v. A. & R. R. R. Co. et al.*

fixed as reasonable for live stock in less than carloads throughout the country:

Animal.	Minimum weight (pounds).	Animal.	Minimum weight (pounds).
Stallions or jacks.....	3,000	Cow and calf (6 months).....	2,500
Additional.....	3,000	Additional.....	2,500
Horses, mules, or horned animals.....	2,000	Yearling bulls.....	2,000
Second.....	1,500	Yearling cattle.....	1,000
Third.....	1,500	Colts, 1 year and under.....	750
Additional.....	1,000	Additional.....	750
Bulls.....	2,000	Calves less than 1 year old.....	500
Additional.....	2,000	Hogs.....	250
Mare and colt (6 months).....	2,500	Sheep and goats.....	200
Additional.....	2,500		

In the proceeding referred to we also prescribed new standard or basic values for all live stock and fixed the percentage of increase in rate to be applied on animals of higher value; but under the Cummins amendment, as amended August 9, 1916, the rates on ordinary live stock may no longer be made dependent upon actual, declared, or released value. *Express Rates, Practices, Accounts, and Revenues*, 43 I. C. C., 510. The changes in the standard or basic values required by our decision therefore affect only fancy, blooded, or racing stock or stock chiefly valuable for other special purposes.

We also found in the *National Society Case* that the less-than-carload rates on crated stock should not exceed those on uncrated stock.

The establishment of the above minimum weights left the situation in western classification territory unchanged, but brought about reductions in the two other classification territories. In southern classification territory there was a reduction from 3,000 to 2,000 pounds on bulls; from 1,000 to 750 pounds on colts; and from 1,000 to 500 pounds on calves. There was an increase, however, from 1,000 to 1,500 pounds on the third horse, mule, or horned animal in a shipment, as well as some increases in the minimum weights on small stock, such as pigs, sheep, and goats. In official classification territory the reductions were greater. Stallions and jacks in that territory were reduced from 7,000 to 3,000 pounds. The original minimum on single animals of other kinds, in no case less than 5,000 pounds, was reduced generally to 2,000 pounds. Upon the whole the decision entailed a substantial reduction of earnings on less-than-carload live stock in official classification territory.

The new standard or basic values also represent material changes. In official classification territory they are generally much lower than those formerly in effect, and consequently a greater proportion of the shipments if billed at actual values will come within the rule providing a percentage increase in charges when the values exceed the standard or basic values. However, in official classifica-

tion territory we have reduced the degree of increase in rates for animals of value above the standard or basic values from 5 to 2 per cent for each 50 per cent, or fraction thereof, of additional value, with the probable result that many more of the shipments will be made at actual values than in the past, thereby increasing the carriers' revenues from this source. In southern classification territory we substantially increased the standard or basic values for several kinds of animals that constitute much of the less-than-carload live-stock traffic, which theoretically results in excluding more of the shipments from the operation of the rule providing for increased rates on animals of values greater than the standard or basic values, although as a matter of fact the value of the great majority of blooded animals shipped exceeds the basic values prescribed. The degree of such increase in rates was not materially changed, having been reduced merely from 5 per cent for each additional 100 per cent, or fraction thereof, to 2 per cent for each 50 per cent, or fraction thereof.

On account of the substantial reductions in minimum weights rehearing of the case was requested by the official classification lines shortly after our decision was announced, but was denied. The order giving effect to our findings in the case was complied with by all the carriers, but simultaneously the lines in official and southern classification territories proposed to increase the ratings on less-than-carload live stock, loose or crated, of values not in excess of the standard or basic values prescribed, from generally first class to double first class. They also proposed a minimum charge of \$5 per shipment for live stock not in crates. One of the evident purposes of the carriers in official classification territory, in proposing higher ratings was to neutralize or offset the reductions in revenue which the lower weight minima would bring about.

No changes were proposed in the western classification. Upon protest of the National Society of Record Associations, the schedules of the official and southern classification lines proposing higher ratings were suspended by the Commission until September 1, 1917, and have since been voluntarily postponed by the carriers until January 1, 1918. The present proceeding is in substance a rehearing of the *National Society Case*, in so far as minimum weights in official and southern classification territories are concerned, and to that extent we have decided to reconsider the latter in connection with it.

Had the proposed ratings gone into effect, the charges in official classification territory would have been restored to substantially the level that prevailed before the minimum weights were reduced as required by the Commission. The class rates, which apply to this traffic, have recently been increased in this territory. The southern classification does not itself at present provide a rating on less-than-carload live stock, but refers to the local tariffs of the individual

lines. These tariffs provide ratings ranging from double first class to sixth class, and sometimes name commodity rates, but the first-class rating generally prevails. The proposed double first-class rating would more than offset the net reductions in minimum weights in southern classification which were slight compared with the proposed increase in rating. On the other hand the increases would be offset to some extent because the present ratings apply only to local rates, while the proposed rating applies also in connection with joint rates. At present, in case a shipment moves over two lines, the combination of first-class local rates is generally charged, but under the suspended schedules charges would be assessed at double the first-class joint rate. The first-class joint rate is usually much lower than the combination of first-class local rates. However, in a large percentage of cases the shipments move over but one road and would therefore be subjected to twice the present charges. Upon shipments consisting of two or more animals, the proposed ratings would often result in charges equal to those on a carload. In the south the charges on less-than-carload shipments of live stock by freight even under the present ratings are sometimes higher than the express charges between the same points.

Protestant contends that the respondents' attempted justification of the proposed ratings is based upon incompetent testimony and urges that the schedules under suspension be required to be canceled for failure of proof. Counsel made timely and formal objections to the introduction and acceptance of substantially all of respondents' evidence on the ground that it was hearsay, consisted of statements of opinion by inexperienced witnesses, or was merely argumentative in character. However, we shall state and consider only such facts as we deem to be sufficiently well established to serve as a guide in determining the questions presented.

In the *National Society Case* we said, at page 356:

When reasonable and uniform classifications with reference to basic values and minimum weights are in force and have been tested, it can then be better determined whether the rates are properly adjusted. This record justifies the conclusion that the reasonable classification rules and regulations herein prescribed will yield fair returns under existing rates.

While we indicated our opinion to be that the findings made in the *National Society Case* would not result in unfair returns to the carriers, the question of revenue was not definitely concluded in that case and is the main question in the instant proceeding.

The less-than-carload traffic in live stock was described in the *National Society Case*, at page 348, as follows:

Although some live stock other than the blooded stock in which complainants are interested moves in less than carloads, such movement is usually limited to short local hauls, is confined principally to the south, and the record justifies the con-



clusion that the greater and an increasing proportion of the less-than-carload movement of live stock consists of the registered animals sold for breeding purposes, and fancy and racing stock sent to fairs for exhibition or racing.

The stock shipped by members of complainant associations is usually loaded and unloaded by the shipper from a loading chute or the platform of the carriers' stations, as may best meet the convenience of the carriers, and moves either in stock or ordinary box cars. Feed and water is placed in the cars with animals so shipped and they have opportunity to rest, so that the provisions of the federal act requiring that live stock being transported in interstate commerce must be stopped each 28 hours or, by consent of the shipper, each 36 hours for feed, water, and rest, does not apply. Shipments may be, and sometimes are, partitioned off or tied in one part of the car, thus limiting the space occupied, and, in contrast with shipments of live stock in carloads, there are very few claims for loss and damage on less-than-carload shipments. One reason for this difference is that carload shipments of meat animals are usually intended for slaughter, and loss of weight by delays in transportation results in enforceable claims for damage while in the less-than-carload shipments loss of weight would rarely, if ever, involve damage claims.

Expedited service is not accorded to the same degree as in the case of carload shipments of live stock. The shipment being a live animal, however, greater expedition in the transportation is necessary than in the case of ordinary dead freight, and additional services are required of the carrier in supervising the shipment. While the carriers of course have the right of placing other freight in cars carrying these less-carload shipments of live stock, the necessity for starting the animal to its destination without unnecessary delay and the fact that not all commodities may be shipped in the same car with live stock limit the opportunity of the carriers to avail themselves of this right. The empty haul incident to this traffic is no greater than on traffic generally.

As stated in the above excerpt, the necessity for starting the animal to its destination without delay and the fact that not all commodities may be shipped in the same car with live stock tends to limit the opportunity of the carriers to avail themselves of their right to place other freight in the car. The respondents endeavored to show that ordinarily the car which carries live stock carries no other freight. Statements of record indicate, however, that live stock in crates is frequently loaded with other freight. Protestant contends that the shipper requires only a small portion of the car and is willing to meet every reasonable requirement and assist the carrier in every way possible in promptly loading and confining the animal or animals to that portion, and therefore should not be penalized by being required to pay charges equal to those for a carload shipment. It introduced evidence to prove that less-than-carload live stock can be shipped in cars containing other freight; also that it can be loaded at depot platforms instead of at chutes and the expense of switching from chutes to depot platforms thereby avoided, and urges that the only obstacle in the way of this proper utilization of car space is the wasteful and inefficient methods of the carriers.

The record shows that these things are possible and are sometimes done, and it would seem that especially in times of serious car short-

47 I. C. C.



age carriers should wherever practicable make use of all available space. Most of the less-than-carload live-stock shipments are for comparatively short one-line hauls between points where there is a substantial movement of miscellaneous less-than-carload freight, which could in many cases be hauled in the same car.

Less-than-carload shipments of live stock generally consist of only one or two animals, and respondents' great objection to the present basis of charge is that the earnings thereon are far below what they would be if the same car carried a carload shipment of practically any other kind of freight. Much evidence was offered by respondents on this point. However, the charge for a carload shipment should not be determinative of the charge for less-than-carload live-stock traffic, even though the transportation conditions in each case may be substantially the same. The charge on such a less-than-carload shipment should be fully compensatory, but a carrier should not expect to receive the same amount of profit as on a carload shipment. Under the present basis of charge the revenue on one animal ranges probably from one-half to one-fourth of the charge made on a carload of live stock, but with each additional animal in the less-than-carload shipment the charge for the shipment rises rapidly until the carload charge is reached. Our principal concern in this case must therefore be with the charge for the first animal.

Under the rates found reasonable for normal times in the *C. F. A. Class Scale Case*, 45 I. C. C., 254, for the greater part of central freight association territory, the minimum of 2,000 pounds prescribed in the *National Society Case* on most kinds of live stock, when applied to shipments of one animal, would yield per car and per car-mile earnings as shown by the following table:

Distance.	First class.	Earnings per car.	Earnings per car-mile.
<i>Miles.</i>	<i>Cents.</i>		<i>Cents.</i>
50	25	\$5	10
100	30	6	6
150	35	7	4.7
200	40	8	4
300	45	9	3

On a cow 1 year old at the minimum weight of 1,000 pounds the earnings would be one-half those shown. On colts at the minimum weight of 750 pounds they would, of course, be still less. In southern classification territory, where a much higher level of rates prevails, the earnings on an animal at the 2,000-pound minimum would be as shown on the next page.

Distance.	Rate.	From—	To—	Earnings per car.	Earnings per car-mile.
<i>Miles.</i>	<i>Cents.</i>				<i>Cents.</i>
59	52	Memphis, Tenn.....	Batesville, Miss.....	\$10. 40	19
90	56	Paducah, Ky.....	Dyersburg, Tenn.....	11. 20	12. 4
143	68	Memphis, Tenn.....	West, Miss.....	13. 60	9. 5
257	86	.....do.....	Wesson, Miss.....	17. 20	6. 7
313	91	New Orleans, La.....	Starkville, Miss.....	18. 20	6

However, these earnings are based upon the theory that the car contains no other revenue producing freight, which for the reasons above stated we do not regard as a fair and proper basis for prescribing reasonable charges on the traffic here in question. In *Minimum Charges on Bulky Articles*, 33 I. C. C., 378, and 38 I. C. C., 257, we prescribed a minimum charge based on 4,000 pounds at the first-class rate as reasonable throughout the country for bulky articles. The minimum was established for the reason that ordinarily special equipment or the exclusive use of a flat or gondola car was necessary. While as a general rule there is no reason why the minimum charge on a less-than-carload shipment of live stock should be less than on ordinary freight, some consideration must be given to the opportunity to secure added revenue by loading other freight with the live stock, which is not afforded in the case of light and bulky articles that occupy the entire car, as well as the fact that special equipment is generally required in the latter case, while an ordinary box car serves in the former.

It might be contended that the minima we prescribed in the *National Society Case* should stand, and that, if necessary, the classification ratings should be increased to protect the carriers against unduly low charges. However, any increase in the ratings would affect all animals in the car and not merely the first animal, and make the charge on two or three animals as high as on a carload. It would be confusing to have a rating on the first animal different than on the additional animals, and therefore an adjustment of minimum weights which will result in reasonable charges seems to be the only practical way to deal with the question. The minimum weights on less-than-carload live stock, particularly on shipments of single animals, as originally fixed by the carriers, were not intended as representative of the actual weights of the animals, but were largely arbitrary and fixed with a view to yielding adequate revenue.

In the *National Society Case* we considered the minimum weights, standard or basic values, and percentage of increase in rates for animals of value greater than the standard, in all three classification territories and stated that uniformity was very desirable. In this investigation, however, we have before us only proposed increased charges on less-than-carload shipments of live stock in offi-

cial and southern classification territories and therefore limit our findings to such territories.

In the light of the evidence now before us, and upon consideration of all the facts, circumstances, and conditions surrounding the transportation of live stock in less than carloads, we are of the opinion that the minimum weights which we prescribed in the *National Society Case* result in less than reasonable charges on this traffic, but are not convinced as to the propriety of the ratings proposed in the suspended schedules. We find that the minimum weights and ratings shown below would be reasonable in official and southern classification territories for application in connection with joint as well as local rates. They are to apply on ordinary as well as on blooded stock, but on the latter the ratings will be subject to the standard or basic values prescribed in the *National Society Case*. Our finding in the *National Society Case* respecting minimum weights in the territories named is accordingly modified, and the order therein, to the extent that it pertains to minimum weights on all less-than-carload live stock, and in so far as it prescribes standard or basic values for ordinary live stock, will be vacated and set aside.

*Live stock, loose, as follows, first class.*

Item No.	Animal.	Minimum weight.
		<i>Pounds.</i>
1	Stallions or jacks over 1 year old, each (see note)..... NOTE.—The charges on any other animal shipped with stallions or jacks over 1 year old will be computed without reference to the charges on such stallions or jacks and shall be in addition thereto.	4,000
2	One horse (gelding, mare, or pony), colt, donkey, mule, jenny, cow, calf over 6 months old, steer, bull, buffalo, burro, or stallion or jack except as per item No. 1 (see item 5)..... Each additional animal or animals of above kinds, constituting part of the same shipment, other than bulls over 1 year old..... Each bull over 1 year old constituting an additional animal (see note)..... NOTE.—When the shipment contains animals of two or more kinds each bull over 1 year old shall be regarded as an additional animal.	3,000 1,500 2,000
3	One mare with foal not over 6 months old..... Each additional couple of the kind named in item 3 or 4 constituting part of the same shipment.....	3,500 2,500
4	One cow with calf not over 6 months old..... Each additional couple of the kind named in item 3 or 4, constituting part of the same shipment.....	3,500 2,500
5	Animals of the kinds named in item 2, when constituting part of the same shipment as a couple of the kind described in item 3 or 4, shall be subject to the minimum weights shown in item 2 for additional animals.....	
6	Small live stock in less than carloads: Calves (six months old or under), goats, sheep, or hogs will be subject to a minimum of 3,000 pounds for each shipment from one shipper to one consignee and destination, and when the weight of any one shipment exceeds 3,000 pounds actual weight shall be charged for, except that where it is impracticable to ascertain actual weight at point of origin or destination each animal will be charged at an estimated weight of 250 pounds, provided that in no case shall less than minimum weight of 3,000 pounds be applied upon the entire shipment, and further, that in no case shall the charge on basis of less-than-carload rate and actual, estimated, or minimum weights exceed the charge on basis of carload rate and minimum carload weight for a single-deck car applicable to the animal or animals in the shipment taking the highest carload rate and highest minimum carload weight (see note). NOTE.—When small live stock is shipped with animals of the kinds named in items 2, 3, or 4 above, the latter, in less than carloads, shall be subject to the estimated weights provided therefor, and the small live stock forming part of the same shipment shall be charged at actual weight, first-class rate, except that where it is impracticable to ascertain the actual weight of the small live stock at point of origin or destination each animal shall be charged at estimated weight of 250 pounds.	

The charge on the basis of less-than-carload rate and minimum weight, or actual weight if greater, shall not exceed the charge on the basis of carload rate and minimum carload weight for a single-deck car of the animal or animals in the shipment taking the highest carload rate and the highest carload minimum weight.

In computing the charges on shipments of other than ordinary live stock, which consist of two or more units, the unit of the lowest value shall be regarded as the first unit in the shipment and be accordingly subjected to the highest minimum weight.

*Live stock in packages.*

	Rating.
Live stock, in crates, boxes or cages, actual weight, subject to classification rules and regulations. (See note.) NOTE.—Charges shall not be in excess of charges on the same stock, uncrated.	Three times first class.

The carriers' schedules may also provide for a minimum charge of \$5 on shipments of uncrated live stock in less than carloads.

Respondents presented for the first time at the argument, and requested the Commission to include as findings in its report, proposed rules (1) for determining charges on mixed carload shipments of "ordinary" and "other than ordinary" live stock, when the other than ordinary live stock bears declared valuations in excess of the normal or basic value; and (2) for determining what minima per animal shall be applied where a lower charge is made by using the less-than-carload rate for a small number of other than ordinary animals and the carload rate for ordinary animals, when made as one shipment in a single car.

While shippers' representatives then appearing took no exception, and we at this time see no reason for objecting to the rules proposed, these rules are not involved or covered by the evidence in this proceeding in such manner as to warrant their being prescribed by the Commission. If, as represented, reductions in charges would result, the respondents are at liberty to embody these rules in their tariffs, subject, of course, to any action deemed proper by the Commission, upon protest or otherwise.

With respect to respondents' request for a further finding in the form of a rule providing for the assessment of charges on a straight carload shipment of other than ordinary live stock when stated to be of different values, based on the rate applicable to the highest valued animal in the shipment, attention is directed to the opinion of the Commission upon this point at page 353 of the report in the *National Society Case*:

There appears no reason why a lower valued animal in a less-carload shipment should take the rate applicable to one of higher value, merely because both are shipped in the same car at the same time. \* \* \* We, at this time, express our view that the rule embodied in the item referred to is unreasonable.

As at present advised, we see no reason for applying in connection with a straight carload of blooded live stock any different rule than that now in effect on less-than-carload shipments; but as this is also a question not covered by the record, we are not in a position to formally pass upon it. However, it would seem that at the most the charges on such a shipment, which would rarely be made by freight, should not exceed those which would result from applying to the actual, or minimum carload, weight the carload rate as increased by a percentage to cover the average excess value of all the animals in the car above the standard or basic value upon which the standard rate is predicated.

#### ORDINARY LIVE STOCK IN CARLOADS.

Prior to decision in the *National Society Case* the standard or basic values provided for all live stock were the same on carload and less-than-carload traffic. Following that decision the values found reasonable by the Commission were published and became effective December 1, 1916, on both carload and less-than-carload traffic. Later schedules were filed by the lines in official classification territory, in which it was proposed, in so far as ordinary live stock in carloads was concerned, to restore the values which were in effect before the decision in the *National Society Case*. These schedules were to become effective February 1, 1917, but were suspended by the Commission for various reasons upon its own motion, and have since been postponed by the carriers until January 1, 1918. Since the hearing was had, we have held that in view of the amended Cummins amendment we can not authorize or sanction rates on ordinary live stock which are dependent upon value. *Express Rates, Practices, Accounts, and Revenues, supra*. Rates should be provided at once which are not dependent upon value.

We find that the schedules under suspension have not been justified, and an order will be entered requiring their cancellation. We also find that a just and reasonable maximum rating on live stock, loose, in less than carloads in official and southern classification territories is, and for the future will be, class 1.

DANIELS, *Commissioner*, dissenting:

In the conclusions reached in this case I am unable to agree for the reason that the minimum weights prescribed, taken in conjunction with the first-class ratings, do not adequately protect the carload revenue.

The record in this case amply supports the finding of the majority report that "less-than-carload shipments of live stock generally con-

sist of one or two animals \* \* \*." An experienced traffic witness familiar with this traffic in the southeast, testified:

Nowadays a less-carload shipment of live stock accompanied by anything but the trappings of the animal itself is the exception and not the rule. Race stock and stock for exhibition purposes is often accompanied by sulkeys, harness, and stable trappings. Aside from this, investigation of two months' business of the L. & N. Railroad disclosed but one instance where anything else was loaded in the car, and in that case a horse was accompanied by a delivery wagon.

The general freight agent of the Southern Railway system confirmed the previous witness's testimony indicating that originally less-than-carload live-stock rates were quoted to attract immigrant traffic; and that it has now wholly changed, so that the movement of less-carload live stock is "almost exclusively a commercial proposition."

Question may be raised why the usual movement of live stock in less than carloads is one where the car is wholly given up to the live stock and not in part utilized for the carriage of other freight. There would seem to be no reason why carriers should not avail themselves of the additional space in such a car if it were a practicable operating proposition. The record discloses the following reasons, among others, why it is not a practicable operating proposition: First, a car into which one or two head of live stock may be loaded requires prompt movement, and can not be held as could a car partially loaded with dead freight; second, in the transportation of live stock in less than carloads the car door must be left partially open to afford air and light. This impossibility of shutting the door tight affords easy access to the interior of the car and opportunity for pilferage; third, it is clear that many kinds of freight could not be safely loaded by reason of possible damage from contamination.

We must therefore conclude that what has been shown to be the usual or typical movement is a movement where one or at most two head of live stock necessarily occupy the car to the exclusion of all other freight. Under these circumstances, the minimum weight that is employed for assessing freight charges is a purely conventional weight bearing no relation to the actual average weight of the live stock carried. And for the same reason the minimum weight attaching to a second or third animal is appropriately less than the minimum weight attaching to the first animal in the car.

The report prescribes the first-class rating as a maximum on live stock, loose. It also prescribes the minimum weight in the case of a stallion or jack as 4,000 pounds.

The distance rates found reasonable for normal times in central freight association territory and cited in the majority report show that the first-class rate for 100 miles is 30 cents. This would mean that the car revenue for the transportation of a car containing one



stallion or jack for a distance of 100 miles would be \$12, or 12 cents per car-mile. This amount under the increased class rates in central freight association territory would be augmented by 15 per cent. Thus augmented, the total revenue would be \$13.80, and the car-mile revenue 13.8 cents. For a haul of 150 miles, the total car revenue under the central freight association scale in the majority report would be \$14, and the revenue per car-mile less than 10 cents.

Another illustration taken from the shipment of one mare with foal or one cow with calf yields the following results: In the majority report the prescribed minimum weight for both animals combined is 3,500 pounds. According to the central freight association scale, the first-class rate for 100 miles is 30 cents. This would yield a total revenue of \$10.50, or approximately 10 cents per car-mile. Such revenues appear to me, under the circumstances here involved, where practically the normal movement is for one or two animals to occupy the car to the exclusion of all other freight, to be noncompensatory and therefore unreasonably low.

COMMISSIONER ANDERSON did not participate in the disposition of this case.

47 L. C. C.



No. 8301.

TRAFFIC BUREAU OF THE SIOUX CITY COMMERCIAL  
CLUB

v.

ALEXANDRIA & WESTERN RAILWAY COMPANY ET AL.

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*Submitted February 11, 1916. Decided November 21, 1917.*

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Rates on lumber and other forest products, other than yellow pine, from points in Missouri, Oklahoma, Arkansas, Texas, Louisiana, Tennessee, Mississippi, and Alabama to Sioux City, Iowa, found to be unduly prejudicial to the extent that they exceed by more than 2 cents per 100 pounds the rates contemporaneously maintained from the same points of origin to Omaha, Nebr.

*C. E. Childe* for complainant.

*A. P. Humburg* and *R. Walton Moore* for Illinois Central Railroad Company; Yazoo & Mississippi Valley Railroad Company; and others.

*Fred G. Wright* for Arkansas Central Railroad Company.

*A. J. Lehman* for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

*C. N. Curtis* for Chicago, Milwaukee & St. Paul Railway Company.

*H. H. Holcomb* for Chicago, Burlington & Quincy Railroad Company.

*M. M. Betzner* for Chicago & North Western Railway Company.

*J. M. Souby* for Texarkana & Fort Smith Railway Company.

*S. W. Moore, J. M. Souby, H. G. Herbel, Fred G. Wright, Thomas Bond, E. A. Haid, C. C. Wright, T. J. Norton, O. W. Dynes, C. S. Burg, W. F. Dickinson, and R. B. Scott* for Atchison, Topeka & Santa Fe Railway Company; Chicago & North Western Railway Company; and others.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is the traffic bureau of a voluntary association of shippers and receivers of freight at Sioux City, Iowa. By complaint, filed September 4, 1915, it alleges that the rates maintained by defendants on lumber and other forest products, other than yellow pine, published in designated tariffs,<sup>1</sup> from points on their lines in Mis-

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<sup>1</sup> F. A. Leland, agent's, I. C. C. Nos. 988, 1079, and 1080; St. Louis Southwestern Railway I. C. C. No. 8842; and Illinois Central Railroad I. C. C. No. 8996.

souri, Oklahoma, Arkansas, Texas, Louisiana, Tennessee, Mississippi, and Alabama to Sioux City are unreasonable and unduly prejudicial to that point as compared with rates maintained by defendants from the same points of origin on like traffic to Omaha, Nebr. The establishment of reasonable and nonprejudicial rates for the future is asked. Rates are stated in cents per 100 pounds and, unless otherwise indicated, are those in effect at the time the complaint was filed.

While the reasonableness of the rates to Sioux City is challenged, the gist of the complaint, as disclosed by the evidence and the argument, is that the adjustment of rates from the producing territory in question is unduly preferential of Omaha in that the spread between the rates to Sioux City and those to Omaha is generally too great. Complainant contends that the rates to Sioux City should in no instances exceed those to Omaha by more than 2 cents and that from the most southern producing points the spread should not exceed 1 cent.

Sioux City is located on the Missouri River, in the northwestern part of Iowa, approximately 100 miles north of Omaha. It is an important receiving, shipping, and manufacturing point for lumber and forest products. Omaha is its principal competitor in western Iowa, Nebraska, Montana, Wyoming, and western South Dakota.

The territory of origin east of the Mississippi River is along the line of the Illinois Central Railroad and its connections, known as the Mississippi Valley territory. Cairo, Ill., is the principal base point upon which rates on lumber from the southeast, that is, the territory east of the Mississippi River and south of the Ohio River, to both Sioux City and Omaha are made, but in many instances the joint rates applying over the Illinois Central and its connections are lower than the combinations. The joint rates to Sioux City were increased November 18, 1914. The line of the Illinois Central, both directly and in connection with its subsidiary, the Yazoo & Mississippi Valley Railroad, taps the lumber-producing territory east of the Mississippi River, and extends to both Omaha and Sioux City. The spread, Sioux City over Omaha, maintained on lumber from Cairo is 2 cents. This difference is also maintained by that line from Memphis, Tenn., but in the rates over other routes the difference reaches  $7\frac{1}{2}$  cents. In *Southeastern Lumber*, 42 I. C. C., 548, 565, wherein it was proposed to make the rate to Sioux City 27 cents by all routes, or  $5\frac{1}{2}$  cents over Omaha, we said that the relationship in the rates from Memphis to Sioux City and Omaha should be the same as in the rates from Helena, Ark., to those points, and that the spread would be left for determination in the present case. From points north and south of Memphis on the Illinois Central and connections the through rates to Sioux City range generally from  $1\frac{1}{2}$  to 5 cents over

those to Omaha. A few examples will illustrate the situation. From that territory extending southwest from Fulton, Ky., to the station immediately north of Memphis and south from Fulton to Jackson, Tenn., the rate to Sioux City is 23.5 cents, while to Omaha from the extreme north section of this territory the rate is 20 cents, and from the remainder of the territory, 22 cents. From territory immediately south of Memphis and extending to the Gulf of Mexico there is an abrupt increase in the rate to Sioux City from 23.5 cents to 30 cents. This rate, with some few exceptions, applies from all points in Mississippi and Louisiana on the Illinois Central and the following railroads: Yazoo & Mississippi Valley, Gulf & Ship Island, New Orleans, Mobile & Chicago, New Orleans & Northeastern, and Mississippi Central. The rate in effect from Corinth, Miss., to Sioux City is 28 cents. From this same territory south of Memphis the rate to Omaha is 25 cents, except that a rate of 24 cents is maintained from Corinth and 27 cents from the Birmingham district. From a number of short roads in Louisiana, Mississippi, and Tennessee the rates to both Sioux City and Omaha are based on arbitraries over the junction points with the Illinois Central. In *Rates on Lumber from Southern Points*, 34 I. C. C., 652, and *Southeastern Lumber, supra*, we permitted rates on cottonwood and gum to be increased to the basis applicable on other hardwoods.

The principal hardwood producing territory east of the Mississippi River is the so-called Delta district, which lies south of Memphis and north of a line drawn eastwardly from Vicksburg, Miss., through Jackson and Meridian, Miss. Charleston, Miss., is located in this district and may be taken as the representative hardwood shipping point. The distances from Charleston to Sioux City and Omaha over the Illinois Central, which is the long route to both points, are 1,084 miles and 1,094 miles, respectively, the distance to Sioux City being 10 miles less than that to Omaha over this route. The 30-cent rate to Sioux City over this route yields a ton-mile revenue of 5.53 mills, while the 25-cent rate to Omaha yields 4.57 mills. The average distance from Charleston to Sioux City over all routes naming the 30-cent rate is 1,071 miles and the average revenue per ton-mile is 5.6 mills. The average distance from Charleston to Omaha over all routes taking the 25-cent rate is 996 miles, being 75 miles less than the average distance to Sioux City, and the average ton-mile revenue is 5 mills. Like computations as to other stations in this territory taking rates to Sioux City 5 cents over Omaha will disclose a similar situation.

Since the hearing in this case the 25-cent rate to Omaha from many of the points of origin in Mississippi and in Louisiana east of the Mississippi River has been advanced to 26½ cents on yellow-

47 I. C. C.

pine, cypress, and hardwood lumber. *Lumber Rates from Helena, Ark., and Other Points*, 41 I. C. C., 565. For example, the rates from Kenner and Garyville, La., from which points Sioux City obtains cypress and gum lumber, were advanced from 25 to 26½ cents. The spread in the rates to Sioux City over those to Omaha has therefore been lessened.

For complainant it is argued that, in view of the fact that rates from Cairo, Memphis, and other southeastern shipping points to Sioux City are adjusted on a basis 2 cents over Omaha, it logically follows that rates from points south of Cairo and Memphis on the Illinois Central and its connections to Sioux City should not be more than 2 cents over Omaha, and that from the more southern points in Mississippi and Louisiana the difference should be less than 2 cents, in accordance with the principle that as the distance increases the differences in rates should decrease. It is therefore contended that the present adjustment of rates from points south of Memphis and Cairo on the Illinois Central and its connections results in undue prejudice to Sioux City and undue preference of Omaha. Manufacturers and jobbers of lumber at Sioux City secure most of their hardwood lumber from Charleston and other points in the Delta district. Sioux City receives more oak than any other kind of lumber, cypress coming second and gum third. Very little cottonwood is shipped in, because of its low grade and value and Omaha's advantage in rates.

On behalf of the Illinois Central it was testified that, while the normal basis for making rates to Iowa points is the combination on the gateways, principally Cairo and East St. Louis, Ill., the pine rates, except to Sioux City, being so made, the hardwood rates from points on its line and connections are now generally below that basis, due primarily to the increase in 1908 of the rates from Cairo to Iowa, with no corresponding increase in the joint rates from the groups south of Cairo. That defendant introduced several exhibits tending to show that the present rates are reasonable. For instance, it is shown that the 23.5-cent rate to Sioux City from Dyersburg, Tenn., a point in the extreme north of the territory of origin in question, yields for a distance of 869 miles over the Illinois Central a ton-mile revenue of 5.4 mills, and for the average distance over all routes, 831 miles, a ton-mile revenue of 5.7 mills. From Garyville, a point in the extreme southern section of the territory, the distance to Sioux City over the Yazoo & Mississippi Valley and Illinois Central is 1,363 miles, over which route the 30-cent rate yields a ton-mile revenue of 4.4 mills, while for the average distance of 1,317 miles over all routes it yields a ton-mile revenue of 4.6 mills. The rates from these representative shipping points to Sioux City are also com-

pared with rates from the same points to other consuming points; for example, a rate of 23.4 cents on all kinds of lumber from Dyersburg to Bellaire, Ohio, a distance of 700 miles, yielding 6.7 mills per ton-mile, the other comparisons similarly favoring the rates assailed. It is insisted for defendant that the low ton-mile revenue produced by these rates, the comparisons with rates for similar distances, the fact that from points on its line and connections the rates to Sioux City are lower than the combinations on the gateways, and the further fact that the rates assailed are in no instance higher than the pine rates, fully demonstrate that the assailed rates are reasonable.

With the exception of some shipments from southern Missouri and from Oklahoma, nearly all of the hardwood and cypress lumber shipped to Sioux City from the territory west of the Mississippi River originates in Arkansas north of the Arkansas River; and there has been no movement of hardwood lumber from Texas, except from Onalaska, and Louisiana, except from Fisher, to Sioux City. From points on the St. Louis-San Francisco Railroad, hereinafter called the Frisco, in northern Arkansas and southern Missouri, and also from points on the Kansas City Southern Railway and Missouri & North Arkansas Railroad in southwestern Missouri and northwestern Arkansas, a difference of 2 cents is maintained in the rates to Sioux City over those to Omaha. However, from other points in that producing territory rates to Sioux City range from 5 to 9 cents higher than those to Omaha. From the southern part of Missouri, northwestern Arkansas, and central and northeastern Oklahoma a 21-cent rate is maintained to Omaha. The Frisco's rates to Sioux City are 2 cents over Omaha from points on its line in this territory east and west of Springfield; southeast of Springfield the difference is 2½ cents. The through rates to Sioux City from points on lines of different carriers in this 21-cent Omaha territory range from 24 to 30 cents. From stations on the Missouri & North Arkansas Railroad, extending southeast from Freeman, Ark., to Heber Springs, Ark., the rate to Sioux City is 28 cents; and from St. Louis, Iron Mountain & Southern Railway stations east of Fort Smith to Ozark, Ark., and on the Arkansas Central Railroad east of Fort Smith, the rate to Sioux City is 30 cents, 9 cents higher than to Omaha. St. Louis Southwestern Railway stations north of Jonesboro, Ark., take a 21.5-cent rate to Omaha, while the rate to Sioux City is 25 cents; and from stations on the St. Louis, Iron Mountain & Southern from the Arkansas state line south to Walnut Ridge, Paragould, and Nettleton, Ark., taking the 21.5-cent rate to Omaha, the rate to Sioux City is 29 cents. South of these territories taking the 21-cent and 21.5-cent rates to Omaha is a strip of territory extending from the west side of the Mississippi River opposite Memphis and in an irregular



course through northern Arkansas and southern Oklahoma, from which a 22-cent rate applies to Omaha, and rates ranging from 26 to 30 cents to Sioux City. The St. Louis, Iron Mountain & Southern east of Fort Smith publishes a 30-cent rate to Sioux City, and west of Memphis to Hamlin, Ark., a 29-cent rate.

Immediately south of the 22-cent group is another group, bounded on the east by the Mississippi River and extending from Memphis to Helena, Ark., and in an irregular course through north central Arkansas nearly to the Oklahoma-Arkansas state line. A 23.5-cent rate applies to Omaha from this group, with rates ranging from 29 to 30 cents to Sioux City. From St. Louis, Iron Mountain & Southern stations, Marianna, Ark., and north, the rate to Sioux City is 29 cents, while from stations on the same line west of Hamlin to Bald Knob, Ark., and northeast and southwest thereof, the rate to Sioux City is 30 cents. South of the 23.5-cent group is one bounded on the east by a line drawn from Helena, Ark., to Watson, Ark., extending westwardly through central Arkansas and southern Oklahoma and including Little Rock and Pine Bluff, Ark. From this group a 24-cent rate applies to Omaha; rates ranging from 26 to 30 cents to Sioux City. From stations on the Missouri & North Arkansas Railroad east of Wheatley, Ark., to the first station west of Helena the rate to Sioux City is 29 cents; from the remainder of this group, east of Little Rock, 30 cents. It is 29 cents from Little Rock, except that the St. Louis Southwestern maintains a 25-cent rate from that point to Omaha and a 30-cent rate to Sioux City. South of the 24-cent group is that territory which is known as the southwestern blanket, extending from southern Arkansas, including Louisiana and Texas, to the Gulf of Mexico. From this territory, with some exceptions, the rate to Omaha is 25 cents and to Sioux City 30 cents. It may be noted, however, that to Omaha many special rates are published, lower than the rates shown, while no such special rates are published to Sioux City.

Taking representative shipping points to both Omaha and Sioux City and computing the distances on the actual distance to Kansas City, plus the short-line distances beyond, we arrive at the following results: From Turrell, Ark., on the Frisco in northeastern Arkansas, a representative point of the group from which a 21.5-cent rate applies to Omaha and 23.5-cent rate to Sioux City, the distances being, respectively, 656 and 751 miles, the rates yield ton-mile revenues of 6.55 mills and 6.26 mills, respectively. For complainant it is contended that this is as it should be, in that the earnings slightly lower per ton-mile to Sioux City correspond with the greater distance. From Marianna, on the St. Louis, Iron Mountain & Southern, a representative point of the group from which a 23.5-cent rate applies

to Omaha and a 29-cent rate to Sioux City, for distances of 721 and 816 miles, respectively, the Omaha rate yields a ton-mile revenue of 6.46 mills and the Sioux City rate a ton-mile revenue of 7.11 mills; from Pine Bluff, Ark., on the St. Louis, Iron Mountain & Southern, a typical shipping point from the territory taking a 24-cent rate to Omaha and a 30-cent rate to Sioux City, for respective distances of 742 and 837 miles, the Omaha rate yields a ton-mile revenue of 6.47 mills and the Sioux City rate 7.17 mills; and from Blissville, Ark., also on the St. Louis, Iron Mountain & Southern, a representative point of that territory taking a 25-cent rate to Omaha and a 30-cent rate to Sioux City, for distances to Omaha and Sioux City of 817 and 912 miles, respectively, the Omaha rate yields a ton-mile revenue of 6.11 mills and the Sioux City rate 6.58 mills.

For complainant it is urged that if the rates to Sioux City were constructed on a differential basis of 2 cents over Omaha the ton-mile revenues would be but slightly less than those produced by the corresponding rates to Omaha. For example, complainant's proposed rate of 26 cents to Sioux City from Pine Bluff would yield a ton-mile revenue of 6.21 mills as compared with 6.47 mills produced by the 24-cent rate to Omaha. It is contended that this would be appropriate, considering the longer haul to Sioux City. If similar computations are made from other shipping points substantially similar results are obtained, and it is argued that this demonstrates that the Sioux City rates should be on a basis of 2 cents over the Omaha rates; and that the present adjustment of rates to Sioux City and Omaha is illogical and results in undue prejudice against Sioux City and its lumber dealers.

On behalf of defendants evidence was introduced dealing with the history of the establishment of lumber rates from the southern producing territory to both Omaha and Sioux City. With respect to the establishment of a fixed differential, Sioux City over Omaha, it is urged that such fundamental differences exist between the two points from a transportation standpoint that only an artificial and arbitrary rule could be invoked for adjusting the rates to either point with strict respect to those carried to the other; that, with respect to lumber traffic from the southwest, Omaha is reached by several originating lines, as is also Kansas City, which tends to narrow the spread in the rates between those points; that as to Sioux City such lumber must in all cases be surrendered by the originating line to some carrier operating north of one of the established gateways, Kansas City, Omaha, St. Louis, or East St. Louis; and that the northern lines are in a position to demand, and do demand, divisions of the through rates which would be more than reasonable for the same services if performed by an originating carrier as a mere



continuation on its own lines of a service already begun. Also, that the present rates to Omaha and Sioux City are depressed as the result of competitive and commercial conditions; that the existing adjustment of rates does no injustice to Sioux City, and in support thereof point to many stations, not more distant from Omaha, St. Louis, Council Bluffs, and other base points than is Sioux City from Omaha, which take differentials much higher than Sioux City does over Omaha.

In *Traffic Bureau of the Sioux City Commercial Club v. A. & S. R. R. Co.*, 24 I. C. C., 177, we found that, in view of the existing rate of 25 cents on yellow pine from points in Arkansas, Louisiana, Mississippi, and Texas to Omaha, the corresponding rate to Sioux City should not exceed 28 cents; and in *Lumber Rates from Points in Arkansas*, 34 I. C. C., 102, we went no further than to condemn a proposed increase in the rate on yellow-pine lumber from the southwestern blanket to Sioux City and correspondingly in the spread over Omaha. In *Lumber Rates from Helena, Ark., and Other Points, supra*, the differences in the adjustment were diminished by increases in the rates on hardwood, yellow pine, and cypress to Omaha from the territories of origin there concerned.

Upon all the facts of record we are of opinion and find that the adjustment complained of is, and for the future will be, unduly preferential of Omaha and unduly prejudicial to Sioux City to the extent that the rates to Sioux City exceed or may exceed the corresponding rates to Omaha by more than 2 cents per 100 pounds.

An appropriate order will be entered.

COMMISSIONERS AITCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.

No. 9327.

NATIONAL PETROLEUM ASSOCIATION ET AL.

v.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY  
ET AL.

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PORTIONS OF FOURTH SECTION APPLICATIONS Nos.  
465, 799, 2659, 4218, 4219, AND 4220.

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*Submitted October 5, 1917. Decided November 12, 1917.*

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Rates on petroleum oil and its products, in carloads, from southeastern Kansas to points in Oklahoma found to be unreasonable. Reasonable maximum rates prescribed for the future. Reparation and fourth section relief denied.

*C. D. Chamberlin and W. E. MacEwen* for complainants.

*C. S. Burg, and W. W. Miller* for Missouri, Kansas & Texas Railway Company; *F. E. Andrews and J. B. Coffey* for Atchison, Topeka & Santa Fe Railway Company; *Thomas Bond and Robert N. Nash* for St. Louis-San Francisco Railway Company.

#### REPORT OF THE COMMISSION.

Large quantities of oil are produced in the state of Oklahoma, and to a lesser extent in the southeastern section of the state of Kansas. It is shipped in the greatest volume to northern and eastern markets through the gateways of Kansas City and St. Louis. There is, however, a substantial movement southbound from southeastern Kansas to distributing stations in the state of Oklahoma, and also some movement northbound from the Oklahoma refineries to distributing stations or points of consumption in the state of Kansas. In competition with each other the Kansas refiner sells in Oklahoma and the Oklahoma refiner sells in Kansas. Taking into consideration the quality of the oil and the freight charges, state laws directed against discriminations compel substantially uniform selling prices in this general territory.

Ninety per cent of the oil movement, including that from Kansas to Oklahoma, is in tank cars, owned either by shippers or private car lines, for the use of which the carriers pay a rental of three-fourths cent per car-mile, loaded and empty; but this rental does not fully compensate the owners for the cost of maintaining the

equipment. The empty movement of tank cars used in the Kansas-Oklahoma oil traffic is practically 100 per cent of the loaded movement; while in that general territory the relation of empty car-miles to the total car-miles, including tank cars and all other equipment, is shown by the statistical reports for 1915 to be 31 per cent. The car-load minimum on oil is the gallonage capacity of the tank, and the average loading 50,000 pounds. The commodity is inflammable and therefore must be handled under the rules governing the transportation of dangerous articles, thus necessitating additional switching services that are not required in handling other freight. The western classification rating is fifth class; while in official classification territory the rating is generally 90 per cent of fifth class. In the western classification territory, and particularly in the southwest where the production is extensive, it has been the practice rather than the exception to maintain commodity rates on oil that are often less than 50 per cent of fifth class.

In *Midcontinent Oil Rates*, 36 I. C. C., 109, 124, decided on August 15, 1915, it is shown that the Kansas-Oklahoma oil rates, then and at present in effect, were based upon the adjustment prescribed in *State of Oklahoma v. C., R. I. & P. Ry. Co.*, 15 I. C. C., 42, decided in January, 1909; and although that adjustment was the subject of indirect complaint, but not really in issue in *Midcontinent Oil Rates*, *supra*, the Commission nevertheless there observed that—

The conditions that governed the making of rates in the case referred to (*State of Oklahoma v. C., R. I. & P. Ry. Co.*, *supra*) no longer exist. Rates from the Kansas refineries to the Oklahoma points prescribed in that case are, under changed conditions, too high, and they should be readjusted.

No readjustment was made, and finally, November 22, 1916, the complaint here under consideration was filed in which it is alleged that the rates on petroleum and its products, carloads, from Arkansas City, Caney, Independence, Chanute, Erie, and Coffeyville, in the state of Kansas, to Bartlesville, Tulsa, Cushing, Drumright, Enid, Oklahoma City, and Clinton, in the state of Oklahoma, are unreasonably high and unduly prejudicial. Reparation and the establishment of reasonable rates for the future are asked. Rates are stated in cents per hundred pounds.

The points of origin named are included in, but form only a part of, an oil rate group maintained by the defendant carriers in the southeastern section of the state of Kansas, which extends from Hutchinson and Moran on the north to the state boundary line on the south; and from Arkansas City on the west to Joplin, Mo., on the east. This group, which includes at least 18 refining points, is approximately 70 miles in length and 140 miles in breadth. It is designated "group A" in the defendants' tariffs, and will be so re-

ferred to here. The average distances from this group as a whole, to the Oklahoma points of destination, together with the present rates and revenue yield per ton-mile and per car-mile and the rates asked by the complainants, are shown in the following table:

From group A to following Oklahoma points.	Average distance.	Present rates.			Rates requested by complainants.		
		Rates.	Ton-mile yield.	Car-mile yield. <sup>1</sup>	Rates.	Ton-mile yield.	Car-mile yield. <sup>1</sup>
	Miles.		Cents.	Cents.		Cents.	Cents.
Bartlesville.....	81	15	3.70	92.60	8	2	50
Tulsa.....	131	15	2.39	57.25	10	1.58	38.17
Cushing.....	153	24	3.17	78.43	12	1.57	39.21
Drumright.....	166	25	3.01	75.30	13	1.57	39.16
Enid.....	173	25	3	72.25	14	1.62	40.46
Oklahoma City.....	204	26	2.55	63.72	14	1.37	34.31
Clinton.....	267	35	2.62	65.54	15	1.12	28.09

<sup>1</sup> Based upon average loading of 50,000 pounds.

From Arkansas City and Coffeyville, both group A points, the rate to Bartlesville is 14 cents; while to that same point from Caney, which also is in group A, the rate is 12 cents. From Arkansas City to Enid the rate is 23 cents. These are exceptions to the groupings.

The average distances, and revenue yield per ton-mile and car-mile, shown in the foregoing table vary slightly from those introduced in evidence by the complainants for the reason that the complainants' figures did not embrace all stations in group A. It will be observed that the reductions asked average approximately 48 per cent.

In support of their contentions that the present rates are unreasonable the complainants show: (1) That the average car-mile revenue on all traffic in the western district is 16 cents; (2) that the northbound petroleum rate from Oklahoma refineries to points in the state of Kansas, for distances greater than the southbound movement from Kansas into Oklahoma, is 15 cents, yielding an average car-mile revenue of 37 cents to Emporia, 27 cents to Leavenworth, and 25 cents to Atchison; (3) that for similar and greater distances the northbound 15-cent rate is also maintained to points in Missouri, yielding an average car-mile revenue of 37 cents to Springfield, 36 cents to Rich Hill, 30 cents to Harrisonville, and 29 cents to Kansas City; (4) that the rate of 20 cents from Oklahoma to St. Louis, fixed in *Midcontinent Oil Rates, supra*, yields an average car-mile revenue of 23 cents; (5) that refined oil rates ranging from 14 to 22 cents are maintained from Shreveport to points in the states of Illinois, Missouri, Arkansas, and Tennessee on the lines of the St. Louis Southwestern and the St. Louis, Iron Mountain & Southern railways, for distances ranging from 74 to 568 miles; (6) that a rate of 19 cents is maintained on petroleum and its products from points in Oklahoma on the lines of the St. Louis-San Francisco and Missouri, Kansas & Texas railways to points in Arkansas on the

line of the Chicago, Rock Island & Pacific, for distances ranging from 106 to over 400 miles; (7) that the present distance rates on crude and fuel oil, carloads, from Kansas group A, to points in Oklahoma, range from 4 cents for 20 miles to 18 cents for over 300 miles, these rates being for single-line hauls; (8) that in this western territory the refined oil commodity rates bear no established or definite relation to fifth class; (9) and that the physical operating conditions in the southbound and northbound movements between Kansas and Oklahoma do not differ materially. Many state and interstate oil rates were compared with the commodity rate from Coffeyville to the Oklahoma destinations; but since these comparisons take into consideration only a single refining point on the edge of the group nearest to Oklahoma, they are not helpful. Moreover, it appears of record that the complainants do not wish the group adjustment replaced with varying rates from each separate refinery in accordance with distance; nor could that consistently be done in the light of the group adjustments on oil northbound and in other directions from both Kansas and Oklahoma. No additional evidence was introduced in support of the allegations that the rates here under attack are unduly prejudicial; nor is it shown of record that the complainants sustained any injury or damage within the meaning of section 8 of the act.

The defendants show: (a) That the lower northbound rate of 15 cents from the Oklahoma group of refineries to points in Kansas is held at that level by a state-compelled maximum rate of 10.5 cents on refined oil, any quantity, moving between points within the state of Kansas, and also by observing the fourth section in the application of that rate, which, in *Midcontinent Oil Rates, supra*, was found to be a reasonable maximum rate from Oklahoma to Kansas City; (b) that the Oklahoma state rates on refined oil are from 50 to 100 per cent higher than the Kansas state rates, and therefore permit of a higher and more reasonable rate adjustment southbound from Kansas to Oklahoma than is contemporaneously maintained northbound; (c) that the Oklahoma state-compelled rates, even though higher than those compelled for transportation between points in the state of Kansas, are unreasonably low and are now being contested in the federal courts; (d) that the rates maintained on crude and fuel oil from Kansas to Oklahoma are necessarily low in order to permit and encourage a movement from a state of comparatively small production to one where oil is produced in vast quantities; (e) that the low oil rates maintained from Kansas, Oklahoma, and Louisiana, to points in Arkansas, were established to permit the refiners in those states to compete with the refiners at Baton Rouge, who ship oil in tank barges up the Mississippi River to West

Memphis, and there distribute it to Arkansas points under the low state rates; (f) that for comparatively similar and shorter distances the rates northbound from Texas to Oklahoma are higher than the southbound rates from Kansas to Oklahoma; (g) that as a general average the rates under attack are between 50 and 60 per cent of fifth class, some specific rates being even lower; (h) that from Kansas City to 53 points in the states of Missouri and Iowa the present commodity rates on oil range from 63 to 94 per cent of fifth class; (i) that from southeastern Kansas and the Missouri River to Colorado the full fifth-class rate is maintained on refined oil; (j) that the haul from Kansas to Oklahoma is largely over branch lines in a thinly populated section of the country; (k) that the population per mile of line, the ton-miles per mile of line, and the tons per loaded car-mile, are lower in the western district than in any other section of the United States; (l) and that the rates complained of are lower than the rates on oil southbound from the Ohio River crossings that were approved by the Commission in *Petroleum to Kentucky Stations*, 43 I. C. C., 35.

Apart from the foregoing evidence the defendants point out that in central freight association territory petroleum and its products are rated 90 per cent of fifth class, and then draw the following comparison, placing in juxtaposition a proposed distance scale on refined oil from Kansas to Oklahoma:

Miles.	Ninety per cent of fifth class.				Proposed distance scale. <sup>5</sup>
	C. F. A. scale. <sup>1</sup>	Shreveport scale. <sup>2</sup>	Missouri River-Nebraska scale. <sup>3</sup>	Memphis-Arkansas scale. <sup>4</sup>	
25.....	5.2	12.6	10.9	12.7	11
50.....	7.1	16.2	13	16.7	15
75.....	7.6	20.7	14.9	20.5	20
100.....	8.6	24.3	17	23.8	22
125.....	9.5	27.9	19.4	26.6	25
150.....	9.9	31.5	21.2	28.9	27
175.....	10.9	34.2	23.5	31.3	28
200.....	11.3	36	25.1	32	29
225.....	12.3	38.7	27.5	34.9	30
250.....	12.8	40.5	28.7	37.9	31
275.....	13.2	45	30	39.6	32
300.....	13.7	45	31.1	41.6	32
325.....	14.2	46.8	33.6	.....	33
350.....	14.7	46.8	34.8	.....	33
375.....	15.6	47.7	36	.....	34
400.....	16.1	47.7	37.3	.....	34

<sup>1</sup> Old scale plus 5 per cent increase allowed in *Five Per Cent Case*.

<sup>2</sup> *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83.

<sup>3</sup> *The Missouri-Nebraska Cases*, 40 I. C. C., 201.

<sup>4</sup> *City of Memphis v. C., R. I. & P. Ry. Co.*, 43 I. C. C., 121.

<sup>5</sup> Intended to apply alternately and only over single-line hauls from Kansas to Oklahoma.

The proposed scale was filed with the Commission to become effective April 18, 1917, but was suspended and subsequently withdrawn under the proceedings in the *Fifteen Per Cent Case*, 45 I. C. C.



I. C. C., 303. If this scale is applied as a group adjustment over the average distances from southeastern Kansas to the Oklahoma destinations here involved, the increase in the present rates would range from approximately 11 per cent at Enid to 75 per cent minus at Tulsa; and if applied as intended, over one-line hauls for the actual distance from each station in the group very substantial increases from the refining points named in the complaint would result. To Clinton from all refining points in the group a reduction would occur, and this also would be the result in the application of the proposed scale from Arkansas City to Cushing, Enid, and Oklahoma City, and from Caney to Bartlesville. In two instances there would be no change in the present rates. In referring to the proposed scale a witness for the defendant stated that it was but a "starter," or basis to work on, and that in a revision of it an average distance might be struck that could be applied from all points in the group.

The fifth-class rate in central freight association territory, 90 per cent of which is applied on petroleum and its products, even under the revised scale, *C. F. A. Class Scale Case*, 45 I. C. C., 254, is in most instances, for distances over 150 miles, less than one-third of the fifth-class rates prescribed for the same distances in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, and *City of Memphis v. C., R. I. & P. Ry. Co.*, 43 I. C. C., 121. For shorter hauls it is from 40 to 50 per cent of the fifth-class rates prescribed in the cases cited. In view of the conditions surrounding the transportation of petroleum and its products in all directions from the midcontinent field, and the prevailing group rate adjustments, as shown upon the record here and also in *Midcontinent Oil Rates, supra*, it is clear that the establishment of the proposed distance scale on Kansas-Oklahoma traffic would throw the rate adjustment on that particular traffic out of alignment with the general adjustments maintained throughout the oil-producing section of the southwest.

HARLAN, *Commissioner*:

To the foregoing statement, by the examiner, of the facts disclosed upon the record and of the contentions of the parties with respect thereto, no substantial objection or criticism was made by either party to the proceeding. The essential accuracy of the facts may therefore be assumed, and is confirmed by our own examination of the evidence offered upon the hearings.

Upon the whole record the examiner proposed a finding that the present commodity rates on oil, petroleum, and its products, in carloads, from southeastern Kansas group A points to the Oklahoma destinations named in the complaint, are unreasonable, and that rea-

sonable maximum rates for the future would not exceed those shown in the following table:

From southeastern Kansas, group A points, to the following Oklahoma stations.	Average distance.	Rate per 100 pounds. <sup>1</sup>	Ton-mile earnings.	Car-mile earnings. <sup>2</sup>
	Miles.	Cents.	Cents.	Cents.
Bartlesville.....	81	12	3	74.08
Tulsa.....	131	15	2.29	57.25
Cushing.....	153	17	2.22	55.55
Drumright.....	166	18	2.17	54.22
Enid.....	173	19	2.20	54.91
Oklahoma City.....	204	20	2	49.02
Clinton.....	267	26	1.95	48.69

<sup>1</sup> No change to be made in present minimum.    <sup>2</sup> Based on average loading of 50,000 pounds.

To this disposition of the issues exceptions were filed by both the parties in interest, the complainants contending, on the one hand, that the examiner had erred in not adopting as reasonable the rates proposed by them, and the defendants protesting, on the other hand, upon the ground that there is no competent evidence of record to warrant a condemnation of their present rates as unreasonable or to justify a reduction of them "to the unreasonably low level proposed" by the examiner. These exceptions bring before us the special matters now to be considered.

As factors favoring a level of rates lower than those now in effect and lower than those proposed by the examiner, the complainants point to (a) the maximum loading of oil to the full capacity of the tank cars contrasted with the lighter loading of other freight; (b) the use of the shippers' terminals for loading and unloading at no expense to the carrier; and (c) the furnishing by shippers of their own cars at less than cost. As indicating that the examiner's scale of rates is too high the complainants direct our attention also to the rates on molasses and cottonseed oil prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, 115, and more particularly to the rate of 22.5 cents on petroleum for a 280-mile haul approved in *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.*, 46 I. C. C., 495. The rates suggested by the examiner are also compared by the complainants with the lower northbound rates on petroleum from Oklahoma to Kansas, and with the scales of state rates maintained on that traffic throughout the general territory involved. In addition it is shown that the ton-mile and car-mile earnings under the suggested rates would exceed the general average earnings on all traffic over the defendants' lines by approximately 200 per cent.

None of these considerations when analyzed tends to show either that the rates sought by the complainants are reasonable or that those suggested by the examiner are too high. In their comparison of those rates with rates on molasses and cottonseed oil the complainants, with some inaccuracy in detail, have used the actual distance rates on

those commodities for single-line hauls prescribed in the first of the above-entitled cases. But we are here dealing with a group adjustment. In *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.*, *supra*, we had under consideration an altogether unusual and special state of facts, and in awarding reparation on the basis of 22.5 cents for 280 miles we expressly refrained from entering a maintenance order because of the pendency of this broader inquiry. Moreover, the rates on northbound oil from Oklahoma to Kansas are unquestionably depressed by the low compelled maximum rates within the state of Kansas. No such influence affects the southbound adjustment. It should be observed also that some of the state scales referred to by the complainants are being contested by the carriers in the courts.

The defendants' exceptions to the reductions in rates suggested by the examiner are stated in very general terms. It is contended that the examiner erred in using the average short-line distances between the Kansas oil rate group and the Oklahoma destinations, instead of "the average distances via all routes" over which the traffic actually moves. But there is no definite showing of record respecting the routes over which the traffic actually moves; and as a matter of fact the average distances used by the examiner were those put in evidence by the defendants and relied upon by them, almost exclusively, in support of their contention that their present rates are not unreasonable. The distances over all the practicable routes are shown of record. But if the distances over all the routes between each refining point in the Kansas oil group and each of the Oklahoma destinations be averaged and the average of these averages be used as the basis for determining what would be reasonable rates for the future, it is clear that the shippers would be penalized by the existence of markedly circuitous routes. In not a few instances such averages would range between 50 and approximately 100 per cent more than the short-line distances.

Petroleum in the established classification for this general territory is rated as fifth-class traffic, and under the distance scale of class rates between Kansas and Oklahoma prescribed in *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 26 I. C. C., 520, 523, the fifth-class rates for the distances involved are approximately 200 per cent of the oil rates suggested by the examiner. In other words, the examiner's proposed rates are about 50 per cent of the fifth-class rates. The ton-mile and car-mile earnings under the latter rates, as shown upon the table *ante*, page 361, appear quite substantial, but it must not be overlooked that they cover not only the loaded haul but also the return haul of the empty tank cars.

Upon a full review, in the light of the exceptions by the parties, of the evidence adduced of record, we conclude and find that the

present rates are unreasonable, and that the rates suggested by the examiner afford a reasonable maximum rate basis for the carriage of "oil, petroleum, and its products," in carloads, for the future between the points in question. The 15-cent rate to Tulsa, being already in effect, will of course require no change.

With respect to the complainants' demand for reparation the examiner in his tentative report proposed a denial of an award on the ground (a) that the complainants had made no showing to justify an award; and (b) that, as the readjustment proposed by him, and here approved by the Commission, affects a comparatively large group of production and many points of destination, it does not appear that substantial justice would be done by requiring reparation based upon the difference between the rates charged on the complainants' shipments moving within the statutory period and the rates here required as reasonable maximum rates for the future. The complainants' exception to this finding proceeds upon the theory that they are entitled to reparation upon that basis as a matter of law. Having shown that they had paid and borne the charges upon their shipments moving within two years prior to the filing of their petition, and the present rates being now found to be unreasonable and lower rates for the future being herein prescribed, the complainants demand a refund of the difference between the present rates and the prescribed future rates on the theory, apparently, that by that amount there was an overcharge on their past shipments, and as if the necessary legal effect of our finding was simply to liquidate the damages the complainants had sustained upon those shipments, leaving no juridical question for the Commission to consider and pass upon so far as reparation is concerned. In substance the argument of the complainants is that a refusal of reparation on the grounds suggested by the examiner would be an exercise of a discretion not vested in the Commission.

This contention is one that has been sharply discussed by counsel in a number of cases before us in which reparation has been denied on the general theory that an award of damages with respect to shipments in the past does not necessarily follow as a matter of law upon a finding that the rate or rates under consideration is or are unreasonable. The theory of the Commission has been that it may award or deny reparation as substantial justice may require according to the special facts and circumstances of each particular case. Our general powers in this particular were recently discussed at some length in *D., L. & W. Coal Co. v. D., L. & W. R. R. Co.*, 46 I. C. C., 506, 508-509, and need not be again considered here. It will suffice to say that in a long line of cases, cited in the proceeding just mentioned, where general rate structures were under examination,

the Commission, holding that such a course was within its established powers, denied awards of reparation because, on the facts appearing in each case, the Commission was of the opinion that reparation was not warranted. As we have examined the record this is such a case and the facts shown justify and require a denial of that feature of the complainants' petition. The record fully justifies a readjustment of the rates on this traffic for the future; but we are not prepared on the record to find that substantial justice requires an award to complainants of reparation on their shipments in the past. As a matter of fact it appears that the rates here complained of are based upon, and some of them actually are, the reduced rates prescribed by us in January, 1909, in *State of Oklahoma v. C., R. I. & P. Ry. Co.*, 15 I. C. C., 42, and have been voluntarily maintained by the defendants beyond the statutory limit of the order there entered. So far as reparation is concerned the demand of the complainants is denied.

Those portions of Fourth Section Applications Nos. 465, 799, 2659, 4218, 4219, and 4220, filed on behalf of the defendants, wherein authority is sought to continue to maintain, on oil, petroleum, and its products, in carloads, from Caney, Independence, Chanute, Erie, Arkansas City, and Coffeyville, in the state of Kansas, to Bartlesville, Tulsa, Cushing, Drumright, Enid, Oklahoma City, and Clinton, in the state of Oklahoma, rates that are lower than the rates contemporaneously maintained on like traffic from or to the intermediate points, were heard with the complaint. The defendants, however, made no effort to support their applications and fourth section relief will therefore be denied.

Appropriate orders will be entered to give effect to these findings.

47 I. C. C.

No. 9224.<sup>1</sup>

CHARLESTON & NORFOLK STEAMSHIP COMPANY.

*Submitted May 15, 1917. Decided November 21, 1917.*

Following *Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co.*, 40 I. C. C., 382. *Held*, That the Charleston & Norfolk Steamship Company is not a common carrier within the meaning of the Panama Canal act and therefore the Commission is without jurisdiction to prescribe proportional rail rates from Ohio River crossings to the port of Norfolk, Va., for use in connection with rates of the steamship company by the boat line which it proposes to operate from Baltimore, Md., and Norfolk to Charleston, S. C.

*Charles Kimmich* and *Frank Lyon* for Charleston & Norfolk Steamship Company.

*W. S. Bronson* for Chesapeake & Ohio Railway Company.

*R. Walton Moore* for Norfolk & Western Railway Company.

*Charles D. Drayton* for respondents other than Charleston & Norfolk Steamship Company.

REPORT OF THE COMMISSION.

*HALL, Chairman:*

On June 14, 1915, the Charleston & Norfolk Steamship Company, a corporation chartered under the laws of South Carolina for the stated purpose of common carriage of freight by steamship, with termini at Charleston, S. C., Norfolk, Va., and Baltimore, Md., filed a complaint wherein it prayed, in substance, that we enter an order under the provisions of paragraph (c) of section 6 of the act as amended by the Panama Canal act of August 24, 1912, requiring the defendant railroads to establish and maintain proportional rates not exceeding certain specified amounts on freight traffic from Louisville, Ky., Cincinnati and Portsmouth, Ohio, and other points, to Norfolk, destined to Charleston, in connection with a boat line to be operated by complainant, and all other boat lines which might operate between the same points.

Upon a consideration of all the evidence presented, and of the arguments of counsel, we dismissed the complaint for want of jurisdiction. *Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co.*, 40 I. C. C., 382. The facts are fully stated in that report, but for convenience certain portions of it will be reproduced here.

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<sup>1</sup> This report also embraces No. 8081, *Charleston & Norfolk Steamship Company v. Chesapeake & Ohio Railway Company et al.*



The capital stock of complainant is \$100,000, about \$50,000 of which is subscribed and \$10,000 paid in. The payments were made to satisfy the requirements of the state laws, and on condition that a decision favorable to the complainant should be rendered by this Commission. The stockholders are responsible business men of Charleston interested in the transportation of property to and from that city. \* \* \*

The complainant proposes, under certain conditions, to carry property by steamship from Baltimore and Norfolk to Charleston. It owns no vessels and never has operated one. It has no terminals for the receipt and delivery of shipments at any point. It has no equipment of any kind. Promoters and officers of complainant frankly state that it does not intend to engage in the transportation of property unless and until the defendants shall be required by order of this Commission to establish proportional rates applicable to traffic moving from and via the Ohio River crossings to Norfolk which shall be no higher than the defendants receive for their part of the through all-rail transportation from the Ohio River crossings to points in Carolina territory via the Virginia cities. It is asserted by complainant that unless the proportional rates are made on the basis desired by it, the service it is to render will be of no benefit to the business interests of Charleston.

\* \* \* \* \*

The Commission acts only by virtue of powers conferred by the Congress. The power granted under the amendment clearly confers regulatory authority over common carriers either engaged in or equipped to engage in interstate transportation of property by rail and water. The proportional rates referred to in the act are to be prescribed, if at all, under certain specified conditions, none of which now exist so far as the complainant is concerned.

We are of opinion and find that the complainant is not a common carrier within the meaning of the amendment and is not entitled to an order fixing the proportional rates desired by it.

No application for rehearing was filed under the provisions of section 16a of the act, but on August 15, 1916, Senate resolution 249, Sixty-fourth Congress, was agreed upon, which, after reciting certain premises, concluded:

*Resolved*, That the Interstate Commerce Commission be requested to initiate an investigation upon its own motion and, in conjunction with this proceeding, reopen the case of the Charleston and Norfolk Steamship Company against the Chesapeake and Ohio Railway Company and others (docket numbered eight thousand and eighty-one) and give all parties an opportunity to submit any further testimony or arguments and that a decision be rendered by the Interstate Commerce Commission.

Pursuant to this request, on October 3, 1916, it was ordered "that a proceeding of inquiry and investigation be, and the same is hereby, instituted by this Commission on its own motion into and concerning the matters and things set forth in said resolution." It was further ordered "that Docket No. 8081, *The Charleston & Norfolk Steamship Company v. The Chesapeake & Ohio Railway Company et al.*, be, and it is hereby, reopened, consolidated with and made a part of this investigation."

The respondents are the four defendants named in No. 8081, and the Charleston & Norfolk Steamship Company, hereinafter termed the steamship company.

At the hearing in this proceeding on April 2, 1917, the evidence consisted of a showing that negotiations on behalf of the steamship company had been undertaken with owners of suitable docks at Charleston and Norfolk who were willing to lease their facilities upon terms to be agreed upon later; and an exhibit setting forth the financial ratings of the stockholders in the steamship company.

Provisions of the act bearing upon this case are quoted in the margin.<sup>1</sup>

It is significant that in all of the passages quoted the Congress has specified "common carrier." The purpose to restrict our jurisdiction to common carriers is consistently followed throughout the act. Under section 1 the provisions of the act "apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone,

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<sup>1</sup>SECTION 1. That the provisions of this act shall apply \* \* \* to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment).

\* \* \* \* \*

SEC. 6. \* \* \* When property may be or is transported from point to point in the United States by rail and water, through the Panama Canal or otherwise, the transportation being by common carrier or carriers, and not entirely within the limits of a single state, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the act to regulate commerce, as amended June 18, 1910.

(a) To establish physical connection between the lines of the rail carrier and the dock of the water carrier by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of its right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a spur track or tracks to the dock. This provision shall only apply where such connection is reasonably practicable, can be made with safety to the public, and where the amount of business to be handled is sufficient to justify the outlay.

The Commission shall have full authority to determine the terms and conditions upon which these connecting tracks, when constructed, shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier. The provisions of this paragraph shall extend to cases where the dock is owned by other parties than the carrier involved.

(b) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced.

(c) To establish maximum proportional rates by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

(d) If any rail carrier subject to the act to regulate commerce enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Interstate Commerce Commission may require such railway to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country.

The orders of the Interstate Commerce Commission relating to this section shall only be made upon formal complaint or in proceedings instituted by the Commission of its own motion and after full hearing. The orders provided for in the two amendments to the act to regulate commerce enacted in this section shall be served in the same manner and enforced by the same penalties and proceedings as are the orders of the Commission made under the provisions of section 15 of the act to regulate commerce, as amended June 18, 1910, and they may be conditioned for the payment of any sum or the giving of security for the payment of any sum or the discharge of any obligation which may be required by the terms of said order.

and cable companies (whether wire or wireless) \* \* \* who shall be considered and held to be common carriers within the meaning of this act," and "The term 'common carrier' as used in this act shall include express companies and sleeping-car companies." By section 6 it is "*Provided*, That wherever the word 'carrier' occurs in this act it shall be held to mean 'common carrier.' "

The evidence now of record does not differ in any material respect from that before us when we made our report in No. 8081, and no error in our findings of fact in that report has been alleged or shown, the only claim being that our conclusion was erroneous. The steamship company is not a common carrier, and as our power to establish proportional rates under the Panama Canal act is expressly limited to rates "which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water," we must adhere to the conclusion that we have no jurisdiction to establish the rates sought.

Apparently the soundness of this view is recognized by the representatives of the steamship company, for at the hearing one stated:

We do not expect the Commission to issue an order but simply to render a decision, and then when the decision has been given, showing that the Commission will issue an order upon the establishment of the line, then we would expect the order to be issued. \* \* \* Nobody is hurt by a decision of the Commission. We do not obligate these people to publish these rates until we are ready to use them. We just want to know that these rates will be available if the steamship line will operate from Norfolk.

Under section 15 our orders, except for the payment of money, "shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction." Section 16 provides that "the Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper." Section 16a provides for rehearing and, in respect of our "decision, order, or requirement," authorizes us under certain conditions to "reverse, change, or modify the same accordingly." These passages clearly show the congressional recognition of the fact that our orders, in so far as they prescribe rates for the future, are based upon conditions that may and frequently do change from time to time and that by such changes they may become "unjust or unwarranted."

Under the so-called Clayton antitrust act, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," certain duties are imposed upon us. We have held that the power to hold a hearing and decide whether or not in our opinion specified sections of that statute are being or have been

violated confers no jurisdiction to determine whether or not certain contemplated or proposed acts would constitute violations of those sections.

At the hearing the Commission's examiner asked counsel "if the Commission should decide that you were entitled to some sort of decision, about how long a time should intervene between the date of the decision and the effective date of any order that might be entered?" The reply was—

I would say the effective date of your order would depend altogether upon when we are ready to put those ships on.

Upon being pressed for a more definite answer he said, "I don't think it would be anything like two or three years before we could put on steamships," explaining that he thought boats could be chartered.

The distinction is plain between a case such as is before us and one where reasonable rates are asked over the lines of an existing common carrier, or where the Commission, having full jurisdiction and power in the premises, defers entering an order pending the submission by the parties of proposed regulations or rates. The decisions relied upon by the representatives of the steamship line were distinguished in our report in No. 8081, *supra*. The *Flour City Steamship Company Case*, 24 I. C. C., 179, is particularly urged upon us as a precedent.

In the present case and the *Flour City Case* there is surface resemblance and essential difference. The latter was brought by the Flour City line, a partnership, which had operated boats for one season on the great lakes, and by the Minneapolis Traffic Association, attacking the rate on flour from Minneapolis to New York and seeking establishment of through route and joint rate via the boat line. After the complaint was filed the Flour City Steamship Company was organized, took over the affairs of the boat line, and was substituted therefor as complainant. It filed tariffs naming the same rates as those which had been published by the boat line. The proceeding was under sections 1, 3, and 15.

The traffic originated with western rail carriers, reached Buffalo by the boat line, and was there blocked by the eastern rail carriers. The complaint grew out of the conduct of these carriers in dealing with shipments brought thus far on their journey.

The substitution of the steamship company was *pendente lite* in the season of closed navigation, during which it naturally operated no boats.

Complainants sought to have through routes and joint rates established by the defendant eastern rail carriers in order to complete the transportation to New York of flour originating with western rail carriers, brought to Buffalo by water, and there encountering the obstruction to interstate commerce of which complaint was made.

In the present case no traffic has moved by water. The complaint is not founded upon any experience of complainant or of any predecessor in interest of complainant. No obstacle to interstate commerce has been encountered. A would-be delivering carrier seeks to have originating rail carriers compelled to name proportional rates to the Virginia cities when for Charleston via its lines. It does not ask for through route or joint rates. It does not in this proceeding attack existing all-rail rates as unjust or unreasonable. It seeks no outlet for traffic which it has originated and started on its way. It has published no tariff, has no equipment, and neither it nor any predecessor has ever carried anything. Its complaint is based solely and expressly on subdivision (c) of section 6, as amended by the Panama Canal act, and not upon sections 1, 3, and 15. It wants the Commission to open for it a new rail-and-water route, but it will not join in maintaining that route unless the Commission prescribes for the originating rail carriers proportional rates to Norfolk in amounts which shall not exceed those designated by complainant. Those amounts are the maxima which the originating rail carriers can get for the haul to the Virginia cities out of the existing through rates all rail from the Ohio River crossings to Carolina territory, which does not include Charleston.

In the *Flour City Case*, which is in many respects the antithesis of this case, the Commission refrained from fixing for the eastern rail carriers the same division, 9.2 cents per 100 pounds, that they received on traffic coming to Buffalo by their "standard" boat lines, but expressed the opinion that their division on traffic via complainant's boat line should not exceed their local rate of 11 cents to New York, which should cover handling from gangplank to destination.

Again, in the *Suffern Grain Company Case*, 22 I. C. C., 178, also cited on behalf of the steamship company, it appeared that complainant had been in the elevator business at or near Decatur, Ill.; that its complaint was based on its experience in that business; and that both Decatur and Cairo, Ill., were served by the defendant Illinois Central Railroad Company, which provided for transit and paid an elevation allowance on grain elevated at Cairo, and refused to allow any transit or pay any allowance at Decatur. We found this to be an undue discrimination from which the carrier should desist, but we prescribed no charge.

None of the issues raised in the *Flour City Case* or *Suffern Case* are presented in this Charleston case. Those cases afford no precedent, and we are constrained by the language of the Panama Canal amendment on which the complaint is based.

The reasonableness of the rates to Charleston is before us in another proceeding, *Freight Adjustment Steering Committee of Charleston, S. C., v. C., N. O. & T. P. Ry. Co. et al.*, Docket No. 8082.



At the argument in this proceeding counsel for the steamship company said "it is a question of establishing a nondiscriminatory rate adjustment at Charleston where, technically speaking, we are before you as a steamship company." Even assuming that the complaint in No. 8081 could be interpreted as alleging unjust discrimination or undue prejudice under sections 2 or 3 of the act, and praying for their removal, the necessary parties are not before us, for the lines of respondents do not extend south of Norfolk, Richmond, Lynchburg, and other Virginia cities. *Poehlman Bros. Co. v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92.

The transportation problems of the country are becoming increasingly important and difficult, and at the present time transportation facilities are taxed to their utmost. It is desirable that all means of carriage, whether by rail, water, or otherwise, be developed to the highest possible efficiency.

The Congress on many recent occasions has indicated a general policy of encouragement in the use of waterways of the country. In short, a wider use of freight transportation by boat is recognized both in and out of Congress as one of the needs of the rapidly growing commerce of the nation. This Commission has recognized and recognizes such a necessity. *Lake Line Applications Under Panama Canal Act*, 33 I. C. C., 699, 700, 712, 713. Whenever and wherever, within the powers granted by the statute under which we operate, there is presented an opportunity to utilize water transportation, this Commission will freely exercise its authority; but such authority can only be lawfully exercised in a proper case. The law is clear that we can name rail proportional rates to ports only in connection with common carriers by water. In order to constitute a common carrier something more substantial is required than a desire for special rates which may be used at some future time should certain contingencies happen. Our conclusion as to lack of jurisdiction is open to review in an appropriate proceeding. *Int. Com. Com. v. Humboldt Steamship Co.*, 224 U. S., 474.

The investigation will be discontinued and an order entered dismissing the complaint in No. 8081.

COMMISSIONER ANDERSON did not participate in the disposition of these cases.

47 I. C. C.



No. 9460.<sup>1</sup>  
**CALIFORNIA PINE BOX & LUMBER COMPANY ET AL.**  
*v.*  
**SOUTHERN PACIFIC COMPANY ET AL.**

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*Submitted July 3, 1917. Decided November 28, 1917.*

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Charges collected on shipments of box shook and box material in carloads, which moved from southern Oregon mills to points in California between certain dates in 1914 and 1915, found to have been unduly prejudicial and to have damaged complainants to the extent that they exceeded charges based on rates subsequently established. Reparation awarded.

*A. Larrison, Bishop & Bahler, and H. M. Wade* for complainants.  
*Frank B. Austin* for Southern Pacific Company.

*G. H. Baker* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

*MEYER, Commissioner:*

These cases involve claims for reparation on numerous carload shipments of box shook and box material which moved during the years 1914 and 1915 from points on the Southern Pacific in southern Oregon to points on that and other railroads in California.

In 1913 the Southern Pacific completed a branch line, 135 miles in length, extending from Fernley, Nev., a point on the main line between San Francisco, Cal., and Ogden, Utah, to Westwood, Cal. The line was built primarily to reach a large tract of timber in the vicinity of Westwood. About the time the line was opened for traffic, the Southern Pacific found out that the lumber company which owned or controlled a considerable part of this timber was negotiating with the Western Pacific Railroad to build a branch line, about 35 miles in length, from Keddie, Cal., a point on that railroad, to Westwood. These negotiations had so progressed that the Western Pacific had offered, upon completion of the proposed branch line, to give Westwood the Keddie basis of rates to points in California. Thereupon, the Southern Pacific, rather than lose the nucleus of the tonnage upon which it was depending for the support of its new branch line, agreed to establish from Westwood the same rates as applied

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<sup>1</sup> This report also embraces No. 9460 (Sub-No. 1), *Great Western Lumber Co. v. Southern Pacific Co. et al.*; No. 9460 (Sub-No. 2), *Great Western Lumber Co. v. Southern Pacific Co.*; No. 9529, *Ewauna Box Co. v. Southern Pacific Co. et al.*; and No. 9529 (Sub-No. 1), *California Fruit Exchange v. Southern Pacific Co. et al.*

from Boca, Cal., a point on its main line 60 miles west of Fernley, taking the same rates as Keddie to points in California. The Southern Pacific amended its tariffs accordingly, effective December 18, 1913.

The rate established from Westwood to Sacramento, a representative California consuming point, was \$2 per ton; the distance is 322 miles. At that time the rates from lumber shipping points on the main line and the Klamath Falls branch of the Southern Pacific in northern California and southern Oregon to Sacramento ranged from \$3.10 to \$4.10 per ton; the distances range from 313 to 375 miles. The northern California and southern Oregon shippers complained of this adjustment to the Southern Pacific, and the northern California shippers also appealed to the state commission. Finally the Southern Pacific agreed to publish a rate of \$2 per ton as maximum from Hilt, Cal., on the main line, Dorris, Cal., on the Klamath Falls branch, and intermediate points, to Sacramento, the distances from Hilt and Dorris being substantially the same as the distance from Westwood to Sacramento. From points farther north rates based on the same amounts over the new rates from Hilt and Dorris as the old rates from those points exceeded the old rates from Hilt and Dorris were agreed to. To points south of Sacramento reductions, corresponding to those made thereto from Westwood, were also agreed to from the northern California and southern Oregon points. Some delay was experienced in publishing these reduced rates, but they were finally made effective on May 25, 1915, from all the points referred to, except Grants Pass, Oreg. The new rates from Grants Pass to points on all lines except the Northwestern Pacific Railroad were made effective on November 28, 1916.

In order to further alleviate the complaints of the northern California and southern Oregon shippers, the Southern Pacific agreed to refund them the difference between the charges collected and charges computed on basis of the new rates on all shipments which moved on or after July 1, 1914, the date on which the Westwood mill began to ship. Permission to make these refunds on intrastate traffic was granted by the California commission and all claims on that traffic have been paid.

On various dates between January 10, 1916, and October 7, 1916, the Southern Pacific filed with this Commission a number of statements showing the details of interstate shipments made or received by the California Pine Box & Lumber Company, the Klamath Manufacturing Company, and the Algoma Lumber Company, three of the complainants in No. 9460; the Great Western Lumber Company, the complainant in No. 9460 (Sub-Nos. 1 and 2); and the California Fruit Exchange, the complainant in No. 9529 (Sub-No.

1); and gave notice of its intention to apply for authority to make refunds similar to the refunds which it already made on intrastate traffic. On various dates between February 29, 1916, and November 10, 1916, the Ewauna Box Company, the complainant in No. 9529, filed similar statements of its shipments. No statements appear to have been filed by, or for account of, the Pine Box Company, the fourth complainant in No. 9460. The purpose of filing the statements, as stated in the letters of transmittal, was to stop the running of the statute of limitations.

Rule III of the Rules of Practice, which became effective on April 10, 1916, provided, among other things, that when a claim has been filed with the Commission merely to stop the running of the statute of limitations, formal complaint thereon must be filed within six months from the date of such filing, or the claim will be deemed to have been abandoned, except in respect to shipments delivered within the statutory period of two years. On April 27, 1916, the above rule was amended so as to provide that either formal complaint or special docket application must be filed within six months from the date of the filing to toll the statute of limitations. The special docket applications filed by the Southern Pacific covered only a comparatively few shipments made by the California Pine Box & Lumber Company, the Klamath Manufacturing Company, and the Algoma Lumber Company, but it may be assumed from the applications and correspondence which passed in respect to the same that the few shipments specifically referred to therein were typical of other shipments made by those three claimants between July 1, 1914, and May 25, 1915. These applications were filed on September 7, 1916, November 8, 1916, and December 28, 1916. The formal complaints were filed on the following dates: No. 9460, on January 11, 1917; No. 9460 (Sub-No. 1), on January 18, 1917; No. 9460 (Sub-No. 2), on January 18, 1917; No. 9529, on January 4, 1917; and No. 9529 (Sub-No. 1), on March 8, 1917. The record therefore shows that the following claims are barred: Claims of the Pine Box Company, as to shipments delivered prior to January 12, 1915; of the Great Western Lumber Company, as to shipments covered by No. 9460 (Sub-No. 1), delivered prior to January 19, 1915, and as to shipments covered by No. 9460 (Sub-No. 2), delivered prior to January 19, 1915; of the California Fruit Exchange, as to shipments delivered prior to March 9, 1915; and of the Ewauna Box Company, as to shipments covered by statements filed on June 28, 1916, delivered prior to January 5, 1915. The record further shows that some of the statements filed to toll the statute contain the details of shipments delivered more than two years prior to the dates on which the statements were filed. Claims based on such shipments are also barred.

Complainants contend that the Southern Pacific was delinquent in not making special docket application for all the shipments of all the complainants, and that therefore it should not be permitted to escape the payment of the damages claimed herein. But whether the Southern Pacific was delinquent in not including all the complainants in its special docket applications, or the complainants were culpable in not promptly handling their own claims can not affect the fact that, under the law, the Commission has no jurisdiction in respect to claims barred by the statute of limitations. *Trans-Mississippi Grain Co. v. C., B. & Q. R. R. Co.*, 41 I. C. C., 612, 614; *Phillips v. Grand Trunk Railway*, 236 U. S., 662, 667.

The formal complaints in Nos. 9460, 9529, and 9529 (Sub-No. 1) allege that the charges collected on the shipments in question were unjust and unreasonable, unjustly discriminatory, and unduly prejudicial, to the extent that they exceeded charges based on the rates subsequently established. The complaint in No. 9460 further alleges that the rates from Grants Pass, Oreg., to points on the Northwestern Pacific Railroad have not been adjusted in accordance with the agreement made by the Southern Pacific, and that those rates, as well as the charges on any shipments which moved thereunder, are unjust and unreasonable, unjustly discriminatory, and unduly prejudicial. The complaints in Nos. 9460 (Sub-No. 1) and 9460 (Sub-No. 2) allege that the charges collected on the shipments covered therein were unreasonable and excessive. In its answers to the various complaints the Southern Pacific states that it is willing to pay reparation on the basis set forth in the special docket applications filed with the Commission. The answers of the other defendants are general denials.

At the hearing no reference whatever was made to the charge that the rates assessed and collected were unjustly discriminatory under section 2, and the allegation that the rates were unreasonable under section 1 was withdrawn. As the complaints in Nos. 9460 (Sub-No. 1) and 9460 (Sub-No. 2) presented no issue other than the alleged unreasonableness of the rates charged and as no witness testified in respect to the damages of the single complainant therein, those complaints must be dismissed. The complainants in the other cases addressed their evidence to the charge of undue prejudice and to the character and amount of the damages alleged to have resulted therefrom. They showed that the operating conditions encountered from the southern Oregon mills to California destinations were quite as favorable as those encountered from Westwood and northern California mills to the same destinations. As it was the threatened and not the actual competition of the Western Pacific that induced the Southern Pacific to reduce the rates from Westwood, no consider-

ation may properly be given to that circumstance. The only difference in the general conditions which surrounded the moving of complainants' products and the products of their competitors at Westwood and the northern California mills was one of greater distance to the destinations. On the present record, the difference in rates which the difference in distance should have reflected is fairly measured by the difference between the rates actually charged from Westwood and those actually retained from the northern California mills on the one hand, and the rates subsequently established from the complainants' mills on the other hand. It follows that the rates charged from the southern Oregon points to California destinations were unduly prejudicial to the extent that they exceeded the rates subsequently established. Whether this undue prejudice operated to the damage of complainants will now be considered.

The lumber and other forest products manufactured at points in southern Oregon and northern California are practically the same as those turned out at Westwood. Between 65 and 75 per cent of the output of the complainant mills consists of No. 2 shop and lower grades of lumber. During the period covered by the claims the factory price of the shop lumber used in the manufacture of box shooks and box material ranged from \$11 to \$12.75 per 1,000 feet, while the mill price of the highest grade lumber was about \$32 per 1,000 feet. The significance of this comparison of prices lies in the fact that the lower the price the smaller the margin of profit secured in selling the lumber. The years 1913, 1914, and 1915 were bad years in the Pacific coast lumber industry, consequently the margin of profit on box shooks and box material during those years was very thin.

The Westwood mill was built with a large capacity, and when it began operations in July, 1914, it naturally endeavored to make its sales commensurate with that capacity. It entered the California market with its product in what a witness for the Southern Pacific termed "a disturbing sort of way." Apparently the California market could not absorb its product and that of its competitors already in the field, so it began to cut prices to a point which the complainant manufacturers could not meet and maintain their normal margin of profit. Having a lower freight rate to the Sacramento district, the largest consuming district of box shooks and box material in the state, and correspondingly lower rates to other consuming districts, it was able to do this and retain a good margin of profit on its own operations. As stated, the rate from Westwood to Sacramento, for example, was made \$2 per ton, or \$1.10 per ton and \$2.10 per ton lower than the rates from northern California and southern Oregon mills, respectively. The average loading of box shooks and



box material is around 40,000 pounds per car, so that the Westwood mill started with a freight rate advantage of about \$22 per car over its northern California competitors and of about \$42 per car over its southern Oregon competitors. While there is a mill at Truckee, which point takes the same rate as Westwood to California destinations, its capacity is comparatively small, and the market for its output has been largely toward the east.

Contracts for the sale of box shook are made in advance, usually run for one or two years, and generally call for the delivery of a minimum and maximum number of cars. They also require that the shook shall come up to certain specifications in respect to the quality of the material used in manufacture. The contract price is based upon the freight rate in effect at the time the contract is made. After the Westwood mill began operations, the complainant mills which happened to have unexpired contracts experienced great difficulty in satisfying their customers who, knowing that shook was procurable at a cheaper price from the Westwood mill, became very particular in insisting upon the specified quality of complainants' products. The slightest defect in any part of a shipment was made the excuse for rejecting the whole shipment. To overcome this condition, the complainant mills found it necessary to use a better and more expensive grade of lumber in manufacturing their shook, so that the quality of the product would meet the most exacting interpretation of the specifications. Another troublesome feature resulted from customers taking the minimum rather than the maximum number of cars under contracts providing for such an option by the purchaser. The mills were required to have ready for shipment, however, the maximum number of cars. In some cases the complainant mills reduced their contract prices rather than run the risk of losing future business to the Westwood mill. All contracts which the complainant mills made after the Westwood mill started were based upon the competitive prices of that mill, which in turn were based upon the lower freight rates available from Westwood. It thus appears that, whether the shipments made after the Westwood mill began operations were on old contracts or on new contracts, the complainant mills were damaged in ways all traceable to the lower rates from Westwood.

The rates from the complainant mills have always been higher than from neighboring California mills to points in that state. In selling box shook and box material in California, the complainant mills have always had to take that fact into consideration in fixing their prices. While the northern California mills encountered the same conditions and were subjected to the same character of damages incident to the opening of the Westwood mill as the complainant



mills, those mills have been compensated in a measure by the payment of their claims. As matters now stand, therefore, the charge of undue prejudice and resulting damage made by the complainant mills is predicated just as much upon the net rates paid by their northern California competitors as upon the rates paid by the Westwood mill.

The complainants in Nos. 9460 and 9529 are manufacturers of box shook and box material, and the shipments on which they are claiming reparation were all sold delivered. They paid and bore the charges on which their claims are based. The California Fruit Exchange, the complainant in No. 9529 (Sub-No. 1), is an incorporated association of shippers engaged in raising deciduous fruits. The exchange is the consignor of all outbound shipments of fruit and the consignee of all inbound shipments of supplies for its members. It was the consignee of the shipments of box shook and box material upon which it is claiming reparation herein. The shipments were purchased f. o. b. point of origin and the freight charges thereon were paid and borne by complainant. Its claim for damages is based upon the fact that in October, 1913, it made a three-year contract with one of the southern Oregon mills for the necessary box shook and box material of its members, and that consequently its members had to pay a higher rate than other fruit raisers not members of the exchange, who were in a position to buy their box shook and box material from the Westwood mill or from the southern Oregon and northern California mills, which had reduced prices to meet the Westwood competition. For this reason one large fruit company withdrew from the exchange, thus decreasing the receipts of the exchange and increasing the pro rata expense of the remaining members thereof. It was also testified that the members of the exchange secured no higher prices for their fruit than the other fruit raisers secured for similar products. These facts prove that the exchange and the fruit raisers represented by the exchange suffered damages, and while the proximate cause of the damages may have been the contract referred to the primary cause was the undue prejudice which attached to the freight rates upon which the contract was based when the relative adjustment thereof was changed by defendants.

At the hearing counsel for the Southern Pacific stated that the question of the adjustment of rates from Grants Pass to points on the Northwestern Pacific Railroad was under consideration, and that those rates would be lined up in accordance with the agreement made with the shippers at that point. According to our tariff files, this readjustment has not yet been made, but the state of the record is not such that an order can properly be entered in respect

thereto. No conclusion is expressed as to the proper adjustment of rates between those points, but if some readjustment is not made within the near future, the matter may be brought to our attention in a supplemental proceeding and jurisdiction is retained for that purpose.

Upon consideration of all the facts of record, we find and conclude that the rates charged, collected, and retained on box shooks and box material, in carloads, from points in southern Oregon on the Southern Pacific, to points in California on that and other railroads, during the period covered by the shipments on which reparation is claimed herein, subjected the southern Oregon points in question to undue prejudice in favor of northern California points on the Southern Pacific and of Westwood on the Westwood branch of that railroad; that on and after July 1, 1914, the complainants in Nos. 9460, 9529, and 9529 (Sub-No. 1) made numerous shipments to points in California and paid and bore charges thereon at rates herein found to have been unduly prejudicial, and that they were damaged to the extent that the charges paid exceeded charges which would have accrued on basis of the rates now in effect; and that they are entitled to reparation, with interest. The exact amount of reparation due these complainants can not be determined upon this record. Those complainants should, therefore, prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to defendants for verification. Upon receipt of the statements so prepared and verified, we will consider the entry of appropriate orders awarding reparation. No claims found herein to be barred by the statute of limitations should be included in the statements. The complaints in No. 9460 (Sub-No. 1) and No. 9460 (Sub-No. 2) are dismissed.

No. 9169.  
NATIONAL LIVE STOCK EXCHANGE  
*v.*  
CHICAGO, BURLINGTON & QUINCY RAILROAD  
COMPANY ET AL.

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No. 9169 (Sub-No. 1.)  
CUDAHY BROTHERS COMPANY  
*v.*  
CHICAGO & NORTH WESTERN RAILWAY COMPANY.

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*Submitted November 9, 1917. Decided November 30, 1917.*

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Upon complaint that transit rules and regulations respecting carload shipments of hogs maintained by defendants at certain points in the states of Wisconsin, Illinois, Iowa, and Minnesota unjustly discriminate against, and unduly prejudice complainant's members, patrons, and the public live-stock markets at Chicago and East St. Louis, Ill., Denver, Colo., St. Louis, Kansas City, and St. Joseph, Mo., Omaha, Nebr., Sioux City, Iowa, Milwaukee, Wis., and St. Paul, Minn.; *Held*, That the evidence fails to show that the rules complained of are unjustly discriminatory as alleged. Complaints dismissed.

*C. B. Heinemann and A. F. Stryker* for complainant.

*R. D. Rynder* for J. P. Squire & Company, and *George P. Boyle* for Cudahy Brothers Company, interveners.

*R. H. Widdicombe* for Chicago & North Western Railway Company; *W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company; *F. M. Miner* and *B. F. Moffett* for Minneapolis & St. Louis Railway Company; *O. W. Dynes* and *H. E. Pierpont* for Chicago, Milwaukee & St. Paul Railway Company; and *Kenneth F. Burgess* and *C. E. Spens* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

It is alleged in this complaint that defendants' tariffs provide that at certain stations in the states of Iowa, Minnesota, Wisconsin, and Illinois shipments of live hogs in carloads may be stopped in transit for feeding, watering, sorting, mixing, selling, double decking, or to finish loading; that they also provide for the protection of the through rates from points of origin to final destination; and that the furnish-

ing of this service at such stations for the purposes named subjects complainant's members, patrons, and the public live-stock markets at Chicago and East St. Louis, Ill., Denver, Colo., Kansas City, St. Joseph, and St. Louis, Mo., Milwaukee, Wis., Sioux City, Iowa, Omaha, Nebr., and St. Paul, Minn., to unjust discrimination and undue prejudice in violation of sections 2 and 3 of the act.

It is further alleged that the maintenance by defendants of the transit service above stated, and their failure to establish and maintain the same or similar service at all other stations on their respective lines wherever and whenever said services are desired by shippers results in undue prejudice in violation of section 3 of the act.

J. P. Squire & Company, packers of hogs, with a plant at East Cambridge, Mass., which receives a large part of the hogs slaughtered by it from concentration or transit points in the state of Iowa, intervened. At the hearing, Cudahy Brothers Company, operating a hog-packing plant at Cudahy, Wis., intervened.

In the subcomplaint it is alleged that previous to February 15, 1917, the Chicago & North Western Railway Company provided in its tariffs that hogs might be stopped in transit for resting, feeding, watering, sorting, or to finish loading at Baraboo, Wis., Belle Plaine, Boone, Clinton, Mason City, Missouri Valley, or Tama, Iowa, and Mankato or Winona, Minn.; that it was also provided that the through rates from points of origin to destinations would be protected; that on the date named the defendant canceled from its tariffs the provisions for transit handling of hogs at the above-named points; and that the cancellation was unreasonable and resulted in unjust discrimination against complainant. The prayer of the complaint is that the defendant be required to reestablish the transit practices and rules canceled by it, or to establish other practices and rules as may be found just and reasonable.

The defendants at a few of the points permit transit handling of all live stock, but this case relates solely to the handling of hogs.

The complaining exchange is composed of individual live-stock exchanges operating at various markets of the United States. Members of individual exchanges are what are commonly known as commission men, who sell live stock consigned to them at public markets, and remit to the consignor the money received by them less commissions, freight and terminal charges, etc. It is asserted by witnesses for complainant that live-stock commission men act as personal representatives of their patrons; advise them as to present and prospective market conditions; attend to presentation to carriers of loss and damage claims; adjust freight charges; and conduct negotiations with carriers, and proceedings before state and federal commissions to remove unlawful discriminations in rates and practices of car-

No. 9169.  
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ing of this service at such stations for the purposes named subjects complainant's members, patrons, and the public live-stock markets at Chicago and East St. Louis, Ill., Denver, Colo., Kansas City, St. Joseph, and St. Louis, Mo., Milwaukee, Wis., Sioux City, Iowa, Omaha, Nebr., and St. Paul, Minn., to unjust discrimination and undue prejudice in violation of sections 2 and 3 of the act.

It is further alleged that the maintenance by defendants of the transit service above stated, and their failure to establish and maintain the same or similar service at all other stations on their respective lines wherever and whenever said services are desired by shippers results in undue prejudice in violation of section 3 of the act.

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The complaining exchange is composed of individual live-stock exchanges operating at various markets of the United States. Members of individual exchanges are what are commonly known as commission men, who sell live stock consigned to them at public markets, and remit to the consignor the money received by them less commissions, freight and terminal charges, etc. It is asserted by witnesses for complainant that live-stock commission men act as personal representatives of their patrons; advise them as to present and prospective market conditions; attend to presentation to carriers of loss and damage claims; adjust freight charges; and conduct negotiations with carriers, and proceedings before state and federal commissions to remove unlawful discriminations in rates and practices of car-



1); and gave notice of its intention to apply for authority to make refunds similar to the refunds which it already made on intrastate traffic. On various dates between February 29, 1916, and November 10, 1916, the Ewauna Box Company, the complainant in No. 9529, filed similar statements of its shipments. No statements appear to have been filed by, or for account of, the Pine Box Company, the fourth complainant in No. 9460. The purpose of filing the statements, as stated in the letters of transmittal, was to stop the running of the statute of limitations.

Rule III of the Rules of Practice, which became effective on April 10, 1916, provided, among other things, that when a claim has been filed with the Commission merely to stop the running of the statute of limitations, formal complaint thereon must be filed within six months from the date of such filing, or the claim will be deemed to have been abandoned, except in respect to shipments delivered within the statutory period of two years. On April 27, 1916, the above rule was amended so as to provide that either formal complaint or special docket application must be filed within six months from the date of the filing to toll the statute of limitations. The special docket applications filed by the Southern Pacific covered only a comparatively few shipments made by the California Pine Box & Lumber Company, the Klamath Manufacturing Company, and the Algoma Lumber Company, but it may be assumed from the applications and correspondence which passed in respect to the same that the few shipments specifically referred to therein were typical of other shipments made by those three claimants between July 1, 1914, and May 25, 1915. These applications were filed on September 7, 1916, November 8, 1916, and December 28, 1916. The formal complaints were filed on the following dates: No. 9460, on January 11, 1917; No. 9460 (Sub-No. 1), on January 18, 1917; No. 9460 (Sub-No. 2), on January 18, 1917; No. 9529, on January 4, 1917; and No. 9529 (Sub-No. 1), on March 8, 1917. The record therefore shows that the following claims are barred: Claims of the Pine Box Company, as to shipments delivered prior to January 12, 1915; of the Great Western Lumber Company, as to shipments covered by No. 9460 (Sub-No. 1), delivered prior to January 19, 1915, and as to shipments covered by No. 9460 (Sub-No. 2), delivered prior to January 19, 1915; of the California Fruit Exchange, as to shipments delivered prior to March 9, 1915; and of the Ewauna Box Company, as to shipments covered by statements filed on June 28, 1916, delivered prior to January 5, 1915. The record further shows that some of the statements filed to toll the statute contain the details of shipments delivered more than two years prior to the dates on which the statements were filed. Claims based on such shipments are also barred.

Complainants contend that the Southern Pacific was delinquent in not making special docket application for all the shipments of all the complainants, and that therefore it should not be permitted to escape the payment of the damages claimed herein. But whether the Southern Pacific was delinquent in not including all the complainants in its special docket applications, or the complainants were culpable in not promptly handling their own claims can not affect the fact that, under the law, the Commission has no jurisdiction in respect to claims barred by the statute of limitations. *Trans-Mississippi Grain Co. v. C., B. & Q. R. R. Co.*, 41 I. C. C., 612, 614; *Phillips v. Grand Trunk Railway*, 236 U. S., 662, 667.

The formal complaints in Nos. 9460, 9529, and 9529 (Sub-No. 1) allege that the charges collected on the shipments in question were unjust and unreasonable, unjustly discriminatory, and unduly prejudicial, to the extent that they exceeded charges based on the rates subsequently established. The complaint in No. 9460 further alleges that the rates from Grants Pass, Oreg., to points on the Northwestern Pacific Railroad have not been adjusted in accordance with the agreement made by the Southern Pacific, and that those rates, as well as the charges on any shipments which moved thereunder, are unjust and unreasonable, unjustly discriminatory, and unduly prejudicial. The complaints in Nos. 9460 (Sub-No. 1) and 9460 (Sub-No. 2) allege that the charges collected on the shipments covered therein were unreasonable and excessive. In its answers to the various complaints the Southern Pacific states that it is willing to pay reparation on the basis set forth in the special docket applications filed with the Commission. The answers of the other defendants are general denials.

At the hearing no reference whatever was made to the charge that the rates assessed and collected were unjustly discriminatory under section 2, and the allegation that the rates were unreasonable under section 1 was withdrawn. As the complaints in Nos. 9460 (Sub-No. 1) and 9460 (Sub-No. 2) presented no issue other than the alleged unreasonableness of the rates charged and as no witness testified in respect to the damages of the single complainant therein, those complaints must be dismissed. The complainants in the other cases addressed their evidence to the charge of undue prejudice and to the character and amount of the damages alleged to have resulted therefrom. They showed that the operating conditions encountered from the southern Oregon mills to California destinations were quite as favorable as those encountered from Westwood and northern California mills to the same destinations. As it was the threatened and not the actual competition of the Western Pacific that induced the Southern Pacific to reduce the rates from Westwood, no consider-

Station.	Hog rate to Perry, Iowa (local).	Hog rate, Perry to Cedar Rapids, Iowa.	Perry hog rate combination to Cedar Rapids, Iowa.	Through hog rate to Cedar Rapids.	Difference between through and combination rates.
	Cents.	Cents.	Cents.	Cents.	Cents.
Canton .....	26.4	12.6	39	28	11
Marion Junction .....	28	12.6	40.6	30	10.6
Scotland .....	27.5	12.6	40.1	34	6.1
Tyndall .....	27.5	12.6	40.1	34.5	5.6
Running Water .....	28	12.6	40.6	35.5	5.1
Emery .....	29.5	12.6	42.1	30	12.1
Mitchell .....	29.5	12.6	42.1	34	8.1
Pukwana .....	32.5	12.6	45.1	39.5	5.6
Trent .....	29	12.6	41.6	30	11.6
Harrisburg .....	27	12.6	39.6	29	10.6
Hudson .....	25.2	12.6	37.8	24	13.8
Elk Point .....	23.4	12.6	36	24	12
Meckling .....	24.6	12.6	37.2	29	8.2
Yankton .....	25.8	12.6	38.4	31	7.4
Wagner .....	28.5	12.6	41.1	35.5	5.6
Platte .....	30.5	12.6	43.1	37.5	5.6
Tripp .....	28	12.6	40.6	34	6.6
Stickney .....	30	12.6	42.6	37	5.6
Chamberlain .....	33	12.6	45.6	40	5.6

Another statement filed by complainant shows that if hogs from the South Dakota points now transited at Perry for the Cedar Rapids packer were marketed at Sioux City, Iowa, the combinations of intermediate rates would be from 2 to 7 cents per 100 pounds higher than the through rates.

The following statement filed by complainant shows the combination through charges on hogs shipped from various points in Iowa to Valley Junction and from that point to Rock Island, Ill., the through rates and the differences between them:

Station.	Iowa single-deck hog rate.	Hogs, carloads, Valley Junction to Rock Island, Ill., destined east.	Combination hog rate to plus from Valley Junction to Rock Island.	Amount through rates less than Valley Junction combination.
	Cents.	Cents.	Cents.	Cents.
Gowrie .....	9.7	18.5	28.2	9.7
Pocahontas .....	11	18.5	29.5	11
Royal .....	12.4	18.5	30.9	12.4
Pleasant .....	13.2	18.5	31.7	13.2
De Soto .....	6.7	18.5	25.2	6.7
Stuart .....	8	18.5	26.5	8
Atlantic .....	10.3	18.5	28.8	10.3
Minden .....	11.4	18.5	29.9	11.4
Council Bluffs .....	12.4	18.5	30.9	12.4
Guthrie Center .....	9.3	18.5	27.8	9.3
Andubon .....	11.1	18.5	29.6	11.1
Griswold .....	10.8	18.5	29.3	10.8
Harlan .....	11.3	18.5	29.8	11.3
Carson .....	11.4	18.5	29.9	11.4
Hartford .....	7	18.5	25.5	7
Purdy .....	8.7	18.5	27.2	8.7
Avon .....	6.3	18.5	24.8	6.3
Lathrop .....	7.3	18.5	25.8	7.3
Winteret .....	8.7	18.5	27.2	8.7
Summerset .....	7	18.5	25.5	7
Indianola .....	7.3	18.5	25.8	7.3

Numerous similar exhibits were filed by complainant to show the differences between combination charges and through rates via Muscatine, Creston, Savanna, and Keithsburg, but they show relatively the same situation and need not be reproduced. In short, these exhibits show that the sums of the local rates into and out of the transit points are higher than the through rates applicable to shipments which are sorted and double decked at the transit points under the regulations in effect.

It is also shown that hogs shipped from certain points in Nebraska via Omaha are charged from 1.3 to 4.3 cents more than the through rates if they are sold on that market and afterwards re-shipped; and that from certain points in Kansas the through joint rates are from 5 to 7.5 cents lower than the combination rates into and out of Kansas City.

On brief the complainant states that the chief question for determination here is whether there is undue prejudice against the open markets and in favor of the transit or concentration points. In other words, is one locality favored as against another by means of freight rates, and practices affecting such rates? It is contended that the transit points are favored for the following reasons:

1. Hogs shipped through the transit points may be stopped there, sorted, sold, and moved to ultimate destinations at the through rates from points of origin. Hogs shipped from the same points of origin through an open market to the same destinations, and stopped for the same purpose as at the transit point, are subjected to charges based on the combinations of intermediate rates which make higher total charges for the through transportation than the through rates.

2. On shipments to transit points the minimum weight need not be loaded at points of origin, but it may be completed from local or other hogs at the stopping points. To the open markets the minimum weight must be loaded, or the shipper must pay the through charges based thereon.

3. At transit points defendants at their own expense furnish yards, scales, etc., while at open markets the charges for yardage, weighing, etc., are borne by the shipper.

It is further contended by complainant that the extension of the arrangements now in effect at transit points to all country stations would result in increased open market receipts, thus yielding increase of business and commissions to members of the exchanges; that under such an extension the country shipper could establish agencies at several small towns; that he could sort and grade and finish loading, and finally reach the open market under through rates from points of origin; and that records could be kept by defendants and shippers that would permit of proper check.

It is asserted by complainant that with larger receipts of hogs on the open markets from which all buyers might choose, and better shipping conditions there, the demand would increase and prices would be stabilized; that every hog purchased in the country takes from the open market buying competition, and to that extent injures every shipper to the market; and that without concentration or transit arrangements at country points every hog buyer would be forced into the open market, and every seller would profit by increased buyer competition.

It will lead to a clearer understanding of the issues here presented if a brief history of the origin and growth of the transit or concentration arrangements be recited. The greatest consumption of hog products is in that part of the country east of the Mississippi River and north of the Ohio River, and the larger volume of the movement of the live hog and meat and other products of the slaughtered animal is from the western territories of production to the east. There has never been a large open market for the sale of hogs in New England, and the local production of hogs has always been comparatively small. Therefore, supplies for packers in that region must be secured from long distances. In the beginning of the hog killing and packing business eastern packers depended in part on local production, although live hogs in large numbers were bought and shipped from Buffalo and Chicago. During the winter seasons these packers bought large quantities of frozen dressed hogs that were slaughtered at interior points in the west and shipped in ordinary box cars. The shipment of frozen dressed hogs was discontinued because there was no refrigeration then available. If a shipment encountered warm weather en route some of the meat arrived at destination in spoiled condition and large losses were the result. The shipping of the live hogs on a dressed weight basis was then adopted. From the year 1880 up to and including the year 1890 about 25,000 carloads of hogs annually were shipped to the far eastern packers on the dressed weight basis from points in the states of Ohio, Indiana, Illinois, and Iowa. This system was adopted by shippers because it saved to them stockyard charges, commissions, etc., that would have accrued had shipments been made to and through established markets. This manner of conducting the business continued until rigid post mortem examinations were instituted by state and federal governments. After inspection became rigorous and effective shippers discovered that hogs were being condemned which were apparently sound and wholesome and country buying and sales on the dressed weight basis declined rapidly. Eastern packers desired to continue buying their supplies of hogs in the country because of saving of market charges, etc. They tried buying



hogs f. o. b. tracks at country points. In a very short time this method proved to be a failure because it was found that the grading, pricing, and weighing by the country shipper led to high cost of hogs and heavy shrinkage en route. It was found that to buy hogs successfully in the country it is necessary to have a representative on the ground to price, grade, and weigh the animals before shipment.

The first transit arrangement on hogs under tariff authority was established at Boone, Iowa, in February, 1890. Shipments under transit were made prior to that time without tariff authority. For example, from Valley Junction John P. Squire & Company has made such shipments for more than 25 years; from North McGregor to Milwaukee, Indianapolis, and Detroit, such shipments were made over 30 years ago; and an arrangement has been in effect at Savanna for more than 30 years with respect to shipments east of the Mississippi River. When rules were published with respect to handling hogs in transit, when shipped from the west to points east of the Indiana-Illinois state line, demands were made by shippers for similar rules with respect to shipments to other points, and from time to time they were established by defendants. For example, as before stated, from certain described territory hogs for the Chicago market are transited at North McGregor; from certain points for Cudahy & Company at Kansas City hogs are handled in transit at Creston; and from certain territory hogs shipped to Cedar Rapids are handled in transit at Perry.

There are several reasons given by eastern packers why it is desirable for them to buy hogs in the country. There is a saving on condemnations. Hogs bought in Chicago for a number of years show an average of 1.05 per cent condemned. During the same period hogs bought in the country show an average of 0.57 per cent condemned, or a difference of 0.48 per cent. This difference is explained by the fact that by operating close to the source of supply the purchaser is able to discover many shipping points that show tuberculosis in the hogs there offered for sale, and by avoiding such points, the percentage of condemned animals falls considerably below that of Chicago and other live-stock markets, where it is impossible to know at the time of purchase where the hogs originated. Hogs bought in the country are forwarded and received in a less bruised condition than those bought at live-stock markets where they are prodded and driven about by employees of the yards for inspection by prospective buyers. The charges to which the shipper is subjected at the present time to forward hogs to the Chicago stockyards for sale are as follows: Terminal charge, \$2 per car; inspection, 15 cents per head; commission, \$10 per car; yardage, 8 cents per head; making a total charge, as estimated by one of the witnesses, of



\$18.58 per single-deck car. The estimate of expense at Chicago is based on the report of the Union Stock Yards & Transit Company for the year 1916, which shows 115,077 carloads received, containing 9,188,224 hogs of an average of 210 pounds, which would make an average of 16,750 pounds per car. The aggregate terminal charge at Chicago on the basis used amounts to 11.8 cents per 100 pounds. A witness for an eastern packer testified that the actual cost of buying hogs in the country at transit points is 1.8 cents per 100 pounds. The minimum weight on single-deck cars is 17,000 pounds, and on double-deck cars, 22,000 pounds. On the long journeys from the west to the east it is desirable that hogs should be transported in double-deck cars. From points on and east of the Mississippi River to points in eastern seaboard territory the carload rate on hogs in double-deck cars is 5 cents less than the rate on hogs in single-deck cars. *Eastern Live Stock Case*, 36 I. C. C., 675.

The movement of hogs to the east under transit arrangements is much larger than the similar movement to all other points involved in this proceeding. The evidence relates for the most part to conditions that exist with respect to the larger movement.

The evidence of defendants is to the effect that the transit arrangements on hogs were originally instituted with respect to shipments from points west of the Mississippi River to points east of the Indiana-Illinois state line to equalize rates via the transit points with rates via Chicago; that local rates into and out of transit points were much higher than the combinations on Chicago; that the transit arrangements were established at division points or regular feeding stations, where live-stock trains are broken and made up, and large quantities of hogs are stopped en route for rest, feed, and water; and that the privilege of sorting at such points permits double decking.

Only about 16 per cent of the stock cars of the Chicago, Milwaukee & St. Paul are double deck; the Chicago, Rock Island & Pacific has but 150 double-deck stock cars; and the Minneapolis & St. Louis has no double-deck stock cars of its own. Shipments outbound from transit points are largely made in cars owned and furnished by transit users.

All the points at which transit on hogs is permitted are important points where live-stock trains are stopped at stockyards built and maintained to rest, feed, and water stock, as required by state and federal laws.

The traffic manager of the Chicago, Milwaukee & St. Paul testified that there is nothing that stands in the way of any shipper using the transit; that the tariffs are plain and worded practically the same as grain transit tariffs, requiring the user to carry out the

rules and regulations and to keep his books open to inspection; that the arrangements are policed by the Western Weighing & Inspection Bureau, in addition to supervision by the auditing department; that it is necessary for anyone doing a transit business in hogs, as well as in anything else, to have a representative look after his interests at the transit point, because the work done there is not the duty of a common carrier; and that if any shipper should desire to avail himself of concentration, double decking, etc., and should locate a representative at any transit point to look after the business, there is nothing that would interfere with his doing the same business as is now done by those located at the transit points. He further testified that there is not such a thing possible as concentration, grading, sorting, double decking, etc., at all points; that there would not be hogs enough to concentrate; that under present arrangements anyone can ship hogs under transit from practically all points in the state of Iowa; that there is no reason why the transit arrangements should be made applicable to all points; that there are no facilities for grading, sorting, or double decking at small local points; that trains are not broken and made up at such points; that the expense would be very great should the rules be made applicable everywhere, and it would seriously interfere with train operation; that it is reasonable and necessary and not unjustly discriminatory to maintain the transit arrangements complained of at points where feeding is done and where a great amount of live stock is regularly stopped in transit; and that the sorting and double decking at transit points, together with the direct through shipment to the east or other points in double-deck cars has its transportation advantages in the way of conservation of cars. He stated that it would involve great complications to permit sorting and double decking at Sioux City, Omaha, Kansas City, or other live-stock markets; that marked changes in the policing arrangements would have to be made; that in double decking hogs can not be transferred from car to car; that it is necessary to sort them; that at those markets hogs are subject to sale and mixing with other hogs arriving on various railroads; and that large local purchases by packers resident at the open markets would complicate the accounts and render it difficult, if not impossible, to police the shipments. He further stated that all hogs received at a transit point must go outbound and under the transit arrangements to the same destination.

Exhibits were filed by this witness to show the combinations of the rates into and out of McGregor to eastern destinations as compared with rates from the same points of origin to Chicago and from Chicago to the same destinations. It is not necessary to set out here these exhibits. It will suffice to state that in many cases the through

charges on the McGregor combination are the same as the Chicago combination, and in other cases lower, and occasionally higher. If the McGregor arrangement is canceled, the combination through charges would be much higher in every instance than those based on Chicago. A few illustrative examples follow on shipments of hogs from Iowa points to East Cambridge, Mass.

From—	Rate under transit.	Chicago combination.	Combina- tion of rates on McGregor.
	Cents.	Cents.	Cents.
Postville.....	51.5	55.5	56.5
New Hampton.....	54.5	55.5	59.5
Clear Lake.....	54.5	56.5	61.5
Whittemore.....	56.5	56.5	63.5
Emmettsburg.....	56.5	56.5	64.1

A similar exhibit shows a comparison of rates on the Savanna and Chicago combinations under the transit arrangement. A few illustrative examples of what the comparative charges would be on shipments to East Cambridge if the Savanna arrangement were canceled follow:

From—	Rate under transit.	Chicago combination.	Combina- tion of rates on Savanna.
	Cents.	Cents.	Cents.
Oxford Junction.....	48.5	51	60.1
Monticello.....	50.5	51	63
Marion.....	51.5	51.5	64
Tama.....	52.5	54	67.5
Herndon.....	56.5	56.5	70

The above illustrates the charges that would accrue if hogs were concentrated and handled at McGregor and Savanna with the transit arrangements canceled.

The testimony of this witness was adopted by the other defendants as applicable to the transit arrangements on their lines.

The assistant general freight agent of the Minneapolis & St. Louis testified that rates on hogs in connection with other lines from Minneapolis & St. Louis stations to Chicago and Peoria, Ill., are the same on single-deck as on double-deck cars, while the rates on double-deck cars from Mississippi River crossings to Boston, for example, are lower than on single-deck cars; that it is to the interest of shippers and carriers to have the hogs double decked at the nearest convenient point; and that the arrangement was established at Keithsburg with that purpose in view. He referred to the fact that the specific complaint against the Minneapolis & St. Louis is the

allegation that transit arrangements on hogs are not maintained at St. Paul, and he testified that no live stock received from points on the line of the Minneapolis & St. Louis for points beyond St. Paul move through that point; and that to handle stock through St. Paul for a destination beyond on the line of the Minneapolis & St. Louis would involve a back haul.

Representatives of each of the defendants testified that no complaint had ever been received by them from any shipper of hogs against the transit arrangements maintained at any point. It is further stated by defendants that upon assurance that the transit arrangement would be used at any point, where the conditions are similar to those which obtain at the various points where the arrangement is now in effect, they would extend the transit rules and regulations to such points. Each of the defendants' representatives testified that the transit arrangements could not be satisfactorily operated at open markets, where there is a large consumption of hogs by local packers, and where the hogs move inbound and outbound by lines of many different carriers.

It is shown by defendants that at the open markets hogs can be shipped in, placed on the markets, and reshipped to the east under the through rates. It is contended by the complainant that at Omaha the through rates are not protected where a sale of the hogs is made. If there is any resulting undue discrimination against Omaha in favor of other open markets it can not be corrected by an order in this proceeding, as that issue is not included in the pleadings.

The interveners introduced evidence to show that it is necessary to have a concentration point in the region of hog production in order to successfully handle them. One farmer may deliver enough hogs to fill a car, but they are of different kinds, weights, and grades, and the need for a point where they can be sorted is imperative; that it would be extremely expensive, and wholly impracticable, to hold the hogs at the original country points until a carload of a particular grade is received; that hogs are shipped from the country points in single-deck cars; that it is practically impossible at small country stations to accumulate a double-deck carload at all seasons of the year; and that a single-deck carload is sent to concentration points where the hogs may be sorted, graded, and sent forward in double-deck cars.

Representatives of J. P. Squire & Company at Valley Junction, Muscatine, and Clinton testified that it was not their understanding that they had any right to the exclusive use of the yards at the points named. At Valley Junction it is shown that there are 32 pens capable of holding 32 carloads of hogs, and that on the average 12 or 13 pens would hold the shipments of Squire & Company. The

transit user at North McGregor is a country buyer of hogs, not in any way connected with any packing concern, but who ships largely to the North Provision & Packing Company at Somerville, Mass., although he makes sales at Chicago and other points when it is to his advantage to do so. Country buyers of hogs testified that it is to their advantage to have concentration points in their region. For example, one country buyer testified that he purchases hogs at Minburn, Iowa, which is located 23 miles from Valley Junction, 7 miles from Perry, and 50 miles from Boone; that if he buys four or five carloads of hogs he has a choice of markets; that on the particular day Cudahy Brothers Company may want what are called "packers," and Sinclair & Company and Squire & Company may not desire that grade; and that he is able to load his hogs at the transit point so as to meet the particular demands and thus secure better financial results. This shipper also sells on the Chicago or Omaha markets when it is to his interest to do so.

A manager for a farmers' cooperative commission company at Elkader, Iowa, testified that the company buys and sells live stock on commission; that the stockholders of the company are farmers, who receive the profits from the business; that sales of hogs are largely made at North McGregor, which is 28 miles from Elkader; that sales at North McGregor are more desirable because the transportation is for a short distance only as compared with Chicago, Omaha, or other open markets, with less risk in transportation and less shrinkage; that returns are received sooner; and that on the average a better price is realized.

Another dealer testified that when he ships to open markets he takes a chance on what the market price may be two or three days after the shipment; and that when he ships to a transit point in the country the transaction is usually concluded on the same day the shipment is made with no uncertainty as to the money he is to receive.

The several country buyers who appeared as witnesses testified that they never had heard a complaint by producers and shippers of hogs that the transit arrangements of defendants were prejudicial to them in any way, and that shippers generally desired that the concentration arrangements should be continued because of increased competitive bidding in the country.

A witness for J. P. Squire & Company introduced an exhibit to show the results from operating under the double-deck rules at various points. It shows the movement of double-deck cars out of the several stations from which hogs were shipped to J. P. Squire & Company during the years 1915 and 1916. In those years 14,081 double-deck cars were shipped. If the hogs had gone forward in



single-deck cars, it would have been necessary to use 21,122 cars, or 7,041 more single-deck cars than the double-deck cars actually used. Ordinarily the contents of three single-deck cars are transferred into two double-deck cars. The exhibit shows the distance for the round trip from the concentrating point to a Chicago gateway, and if single-deck cars had been used there would have been 3,425,062 extra car-miles and 25,997 extra car-days. The witness also testified that if the double decking had not been done at Valley Junction or other transit point, the single-deck cars would not have been permitted to go through to New England, but would have been transferred to double-deck cars at Chicago, Calumet Park, or Kankakee, Ill.; that it would have been necessary to do this in order to save 5 cents on the freight rate east of Chicago; that if the double decking had been performed at some Chicago rate point it would not have added a single hog to be sold on the Chicago market, because they would not have passed through the stockyards there; that there are facilities at Calumet Park, where double decking can be done; and that the cancellation of the transit arrangements at Valley Junction and the other points would result in having the hogs double decked long distances east of those points. It is shown that on a large part of the traffic the defendants receive the same compensation for the through haul regardless of whether the cars are double decked at Valley Junction, Calumet, Kankakee, or other Chicago rate point. From points where the through charges are the same via Chicago as via other concentration points the cancellation of the transit arrangements would mean that the hogs would be double decked at Chicago junctions without the payment of any greater charges by the shipper. It would also require the defendants to transport single-deck cars from the west to Chicago junctions, and the transfer of the hogs would be made in a highly congested district instead of in the country, where conditions are more favorable and where the work could be done at less expense.

The statute does not confer upon this Commission power to regulate the purchase and sale of articles. The propriety of the practice of purchasing hogs in the country or on the open markets is not here for determination. The transit arrangements, of which complaint is made, have been maintained for a long time, and were originally instituted in response to reasonable demands of shippers for a service alike beneficial to them and the defendants. These facts may properly be taken into account in connection with all the other facts and circumstances of record. Within proper limitations, and with due regard to their obligations to the shipping public, carriers have the right to make reasonable regulations for the conservation of their equipment. Under conditions with respect to car sup-



ply that have existed for two years or more, any rule or regulation that effects a wider use of cars and promotes their prompt movement is of special importance. Whether as a commercial proposition it is better that all hogs produced in the region of open markets should be transported there and sold to the exclusion of sales at country points is a matter which has no controlling force as the law now stands in the determination of the issues involved in this case. The question is, Do the transit arrangements of defendants unjustly discriminate against complainant's members, or the open markets where they do business? The complainant represents commission men who are not shippers. The chief witness for complainant testified that

The commission men are not shippers. They are the men who sell the stock, and every additional car they could sell would be a benefit.

No shipper was produced by the complainant to testify as to the effect upon his interests of the transit arrangements maintained by defendants. A number of commission merchants of Chicago testified that the purchase of hogs at country points resulted in a reduction of receipts at the Chicago market from such points, and reduced by so much competitive bidding on that market. They were of opinion that the sale of all hogs on the open markets would result in more stable prices.

Statements were made in behalf of complainant that the transit arrangements are maintained for the exclusive use of certain packers and shippers. The schedules of defendants are open to all shippers alike. No shipper of hogs was produced who had demanded the use of facilities for the handling of hogs in transit at any of the points, and had been refused by any of the defendants. It can not fairly be imputed to the defendants that they have violated the provisions of their tariffs merely because the transit arrangements are actually used by but one shipper from each transit point. Complainant's witness, after a personal inspection of a few hours at each of the transit points, testified that the facilities provided are inadequate to accommodate more shippers than are now using them. This is directly contrary to the evidence of defendants, which is to the effect that the yards and facilities at the transit points are ample to meet the demands of all shippers, and are not monopolized by the shippers now doing a transit business there. However the fact may be, the obligation to furnish adequate facilities is upon the defendants. If demands are made by shippers for the use of facilities for the purpose of handling hogs at any point where the rules are now applicable, the requirement of the law is that the facilities shall be used without discrimination between shippers.

The evidence fails to show that there is any undue prejudice to any shipper in the furnishing of facilities by defendants at transit points on their respective lines. The next question is whether the designation by defendants of certain transit points, with certain transit rules and regulations applicable thereat, constitutes unjust discrimination against open markets. It does not follow that there is any unjust discrimination within the meaning of the act merely because the rules at transit points are different from those maintained at open markets. Whether a particular discrimination comes within the prohibition of the law, that is, whether it is undue or unjust, is a question of fact to be determined by the Commission upon consideration of all the circumstances and conditions of each case. Transit practices such as are here in question are not unlawful *per se*, and they become unlawful only in case they unduly prejudice some shipper, locality, or class of traffic. It is impossible to have an adjustment of rates which places each locality upon an exact equality. For example, practically all freight rates between the east and west break on Chicago. In theory, in order to avoid all discrimination, every other point in the country competitive with Chicago should have an adjustment of rates, in and out, that would be equal to the through rates. In other words, it would require that every local station be a rate-breaking point. The Commission has held that no such fundamental readjustment of rates is necessary. In *Wichita Board of Trade v. A. & S. Ry Co.*, 29 I. C. C., 376, 377, the issue was stated to be:

If carriers so adjust their rates that they end and start at a given city, so that shipments through such city take the sum of the rates to and from it, must a like adjustment of rates be made at all competing points? That is to say, to use a phrase of the railroad world, if rates "break" at one point, does the command against discrimination require that they should also be made to break at all rival points?

The issue so stated was answered in the negative, and the complaint was dismissed. The same principle is applicable to transit and other practices. It would not be possible and it would not, in all cases, be just and reasonable as between competing points to have precisely the same transit rules at all points. Circumstances and conditions are different at different points, requiring that rules shall be so framed and operated as to meet the divergent conditions. Substantial differences in circumstances and conditions must be recognized in determining whether the granting or withholding a given practice is unduly preferential or prejudicial. At the open markets the transit arrangements provide generally that hogs may be sold and graded and sent forward at the joint rates from points of origin to destination, but there is the requirement that the identity of ship-

ments must be preserved. It is charged by complainant that this requirement, which is not provided for in the transit rules at country points, is unduly prejudicial to the open markets. At the transit points there is no local consumption. The hogs that are received inbound must move outbound, generally, to specified destinations. The transfer from single-deck to double-deck cars requires a mixture of hogs, so that, as a practical matter, the identity of shipments is not and can not be preserved. The rules at country points apply to the lines of one carrier inbound and outbound, and the hogs are handled in yards owned and operated by it. At the open markets hogs arrive over lines of various carriers from numerous points and are delivered at central stockyards owned by independent interests. The hogs are exposed for sale and large quantities are purchased for local consumption. Numerous carriers are interested in both inbound and outbound shipments. Circumstances at open markets are such that the requirement that the identity of shipments be preserved in order to avoid manipulation of published rates is just and reasonable. At country transit points no such requirement is necessary. Shipments in and out are made by one carrier, which, under its rules, can easily and effectively police the transit arrangement and protect its established rates.

It is further alleged by complainant that the open markets are unjustly discriminated against because facilities at the transit points are furnished by defendants without charge, and that switching and other services are rendered free, while at open markets charges are made for use of facilities, switching, and other services. At open markets it is not practicable, even if possible, for each carrier to own and operate its own stockyards. There is need for a central point where the market may be conducted, and to which each carrier may have access through a switch connection or a terminal carrier as at Chicago. At transit points the carrier is bound to furnish yards where hogs may be rested, fed, and watered to comply with state and federal statutory requirements. Large quantities of hogs are regularly stopped at these points for the purpose. At practically all the transit points trains are broken and made up, and the service of delivering hogs to the yards for transit purposes entails little or no additional service or expense to the carrier. Whether the carrier would be justified in making charges for services at transit points is another question not directly here involved. It is not here shown that the fact that certain charges are made at the open markets, which are not made at transit points, constitutes unjust discrimination against the open markets. The circumstances and conditions at the latter, as compared with those which obtain at the former, are

dissimilar and different transit rules are not unjustly discriminatory within the meaning of the act.

The complainant also alleges that the maintenance of transit arrangements at the designated points is unjustly discriminatory against all other shipping points in the country. In the first place, it is to be noted that no shipper of live stock, so far as this record shows, has complained of the transit practices now maintained by defendants, or has asked that they be further extended. On the contrary, the testimony of the country shippers is that the present practices are beneficial to them and to the producers of hogs. Some of them stated that they had no objection to the extension of the transit rules to all points, but they did not ask that they be so extended. No meat-packing concern or other shipper of hogs testified that the transit practices operated to its or his disadvantage, or to the advantage of any competing concern or shipper. The defendants assert that the extension of the transit arrangement to all country points would be impracticable. The rules provide for grading, sorting, mixing, double decking, feeding, watering, and in some instances to finish loading. The facilities are not ample at all country points to permit grading, sorting, or double decking; and the service would be expensive to the carrier with no compensating benefits in the way of conservation of equipment, in addition to being of no service to the average shipper. The transit arrangements have been established at points that are convenient to the carriers and shippers alike, and where the service may be performed at a minimum of expense.

Complainant asserts that there is undue prejudice to the open markets because on shipments to transit points the minimum weight need not be loaded at points of origin, but may be completed at the transit point. The fact that hogs may be shipped to transit points on less than the minimum weight does not unduly prejudice the shipper to the open markets because the charges for the through transportation are in both cases based upon the minimum weight from point of origin to destination.

A rule was formerly in effect on most western railroads which permitted the stopping of cars of live stock for additional loading at all stations under a charge of \$2 per car. Effective March 1, 1913, the rule was withdrawn. The propriety of the withdrawal of the practice was considered by the Commission in *Hoyt & Bergen v. C. & N. W. Ry. Co.*, 32 I. C. C., 319, and approved on the stated ground that the practice disarranged the carrier's train schedules and resulted in serious delays. That was a wholly different question than the one here presented. Here the defendants maintain the transit arrangements at division or other points where they have

facilities to accommodate shippers, and where there is no interference with train operations.

A transit rule similar to the ones under consideration here was before the Commission in *Interstate Packing Co. v. C. & N. W. Ry. Co.*, 42 I. C. C., 189. Upon the facts of record in that case the rule was found to be unjustly discriminatory. The defendant thereupon canceled the transit arrangement at all points on its line. In that case it appeared that the Interstate Packing Company operated a meat-packing plant at Winona, Minn., and Cudahy Brothers Company operated a similar plant at Cudahy, Wis., near Milwaukee, Wis. One of the transit points at which the Cudahy Brothers Company sorted and finished loading cars of hogs was Winona. The report states that while it was possible for that company to concentrate at Winona shipments of hogs purchased in the neighborhood destined to Milwaukee, the defendant had not established any point beyond Winona at which the Winona packer could concentrate hogs for shipment to Winona. It was found by the Commission that the arrangement in effect at Winona was unjustly discriminatory against the Winona packer. The principal point decided in the case was that the rule operated to the advantage of one meat packer as against a competitor. It is obvious that it was unnecessary for the defendant in that case to withdraw the transit arrangement at all points to remove the unjust discrimination found to exist. The discrimination in that case would have been removed by establishing the transit practice at one additional point, reasonable from the standpoint of the carrier and convenient with respect to the operations of the packer at Winona.

In this case no such condition as was shown to exist in the *Interstate Packing Company Case* has developed. No packer has testified that the transit rules operate to advantage one concern and to disadvantage another. No shipper has shown that the transit rules complained of operate to his disadvantage or to the advantage of other shippers.

The real question here is whether the defendants have established transit practices at a sufficient number of points to meet the needs of all those engaged in shipping hogs from the territory of origin to the destination territory with respect to which transit rules are applicable. If there is demand for the establishment of other concentration points, then those points should be designated by those who seek to have the practice extended, and it is fair to assume from evidence submitted by defendants that they will establish the transit arrangement at additional points reasonable from the standpoint of facilities to be used, and with respect to train operations.



There is no allegation in the complaint that undue prejudice to any shipper has resulted from the provision for finishing loading at some points and not at others. The reasons for the difference in the rules in this respect are not given by defendants. No finding with regard thereto may be properly made here. It may be suggested, however, that where a transit service is rendered in the same general territory under substantially similar circumstances and conditions, the rules should be practically uniform to avoid any undue prejudice to any shipper, and afford to all those who desire to use the arrangements that equality of treatment which the law commands.

From all the facts and circumstances of record it can not be found that the failure of defendants to establish the transit arrangements now in effect with respect to shipments of hogs at designated points, at all stations on their respective lines is unjustly discriminatory against any shipper or locality.

It is further contended by complainant that at certain transit points the defendants are engaged in unlawful practices because transit users are employed to feed and water hogs en route, and that the billing passes through the hands of such transit users, disclosing information concerning the destination and routing of shipments contrary to the provisions of section 15 of the act. The evidence shows that at one or two of the transit points transit users are employed by defendants to care for shipments of hogs which are required to be fed and watered en route. Whether the billing passes into the hands of the transit users in such a manner as to inform them with respect to the details of shipments is not clearly established of record. It is admitted by defendants that hogs billed through may be purchased at transit points, but in such case the reasonable presumption arises that the sale is made with the consent of the shipper. The attention of defendants is thus called to this matter, however, and it must be assumed that their practices will be made to comply with the law.

In the subcomplaint the Commission is asked to order the Chicago & North Western to restore the transit arrangements canceled by it in February, 1917. It is well settled that the stoppage of articles of commerce in transit for treatment or handling, and the protection of through rates from points of origin to destination, is in the nature of a special service, which a carrier may concede, but which a shipper can not always demand as a matter of lawful right. The Chicago & North Western states that it is willing to restore the practices at such division or stock-feeding points as may be demanded by shippers, should the Commission prescribe just and reasonable rules. Transit rules now in effect are not here attacked except on the broad ground



of their discriminatory character. There is no allegation that any particular provision of the rules is unreasonable or unlawful. No evidence was submitted as to what change or changes, if any, should be made in the rules as they are now published. In restoring or establishing transit a carrier is under the obligation so to frame its rules that practices under them shall not operate to the undue prejudice or preference of any shipper, locality, or class of traffic.

The complaints in these proceedings should be dismissed.

**CLARK, Commissioner:**

The foregoing proposed report of the examiner was served upon the parties, certain exceptions were filed thereto by complainant, and the proposed report and those exceptions were orally argued before the Commission. Some slight modifications have been made in the examiner's report as originally served, but no substantial error of fact was alleged or pointed out. Complainant excepted to the conclusions reached by the examiner and disagreed with the examiner as to the weight to be given to, or the inferences to be drawn from, certain of the evidence.

We think that the conclusions reached by the examiner are sound, and his report and the findings therein are adopted by the Commission. An order will be entered dismissing the complaints.

47 I. C. C.

No. 9525.

WILLIAM H. GREENFIELD, JR., TRADING AS GREEN-  
FIELD & COMPANY,

v.

PENNSYLVANIA RAILROAD COMPANY.

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*Submitted November 14, 1917. Decided November 30, 1917.*

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Complainant purchased coal of a coal-mining company to be delivered to complainant at a siding at the company's mine at Figart, Pa. The defendant refused to furnish cars for the interstate transportation of the coal, except upon condition that the cars so furnished should be counted against the allotment of cars to the mining company as determined by the rating of its mine and the defendant's rules of car distribution. Upon complaint alleging that the defendant's refusal to furnish cars as requested was unreasonable, unjustly discriminatory, and unduly prejudicial; *Held*, That the proper observance and impartial application of defendant's rules for the distribution of coal cars required it to pursue the course adopted, and its refusal to furnish cars under the circumstances disclosed upon this record was not unreasonable or otherwise unlawful. Complaint dismissed.

*Pierson & Shertz* for complainant.

*Henry Wolf Biklé* for defendant.

#### REPORT OF THE COMMISSION.

##### DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

The complainant, a wholesale dealer in coal at Philadelphia, Pa., asks reparation because of the defendant's refusal to supply cars for the interstate transportation of bituminous coal for complainant from Figart, in the Clearfield district in the state of Pennsylvania, to New York, N. Y. He alleges that the defendant's failure to supply cars for the shipments in question was in violation of the duty imposed upon common carriers not only by section 1 of the act to regulate commerce, but by the common law. Undue prejudice and unjust discrimination are also alleged, on the ground that the defendant furnished cars for the transportation of shipments tendered by other shippers under substantially similar circumstances.

By a contract dated November 23, 1916, the complainant agreed to purchase from the Figart Run Coal Company "a minimum of 50 tons and a maximum of 200 tons" of bituminous coal daily from the date of the contract to April 1, 1917, the coal to be delivered by the coal company to the complainant at a railroad siding extending to

the former's mine at Figart. In a supplementary agreement made on the same date it was agreed that the contract "only covers all the coal that Figart Run Coal Company can mine over and above the regular car supply furnished them under their rating, \* \* \* it being distinctly understood that the Figart Run Coal Company may load all the cars received by them under their rating before loading any cars for Greenfield & Company." It was further agreed that the complainant would load no coal at this siding except that purchased from the coal company. It was understood that the complainant would get the necessary cars from the defendant. The coal company mined 50 tons of coal for the complainant in accordance with the provisions of the contract, and placed it on the ground less than 100 feet from the siding, and only a few feet from the mouth of the mine. From where it lay it could easily have been shoveled into the mine cars and then loaded in defendant's cars by using the mine's tipple. The last-quoted excerpt from the contract suggests that the coal was to be loaded by the coal company, but it seems to have been the understanding of the parties that it was incumbent upon the complainant to make his own arrangements for loading. He testified that he intended to construct a chute through which to spout the coal to defendant's cars, but no such provision had been made when the cars were ordered.

As soon as the 50 tons were mined the complainant duly requested defendant to furnish equipment in which to transport the shipment. The defendant offered to do so, but only on condition that the car or cars so furnished would be counted against the daily allotment of cars to the Figart Run Coal Company under the defendant's rules for car distribution. To this the coal company refused to agree, because it regarded the complainant as the shipper of the coal, and because the contract of sale between the coal company and the complainant specifically provided that cars furnished for the coal in question should not be counted against the coal company's distributive share. The complainant's request for cars was frequently repeated and as often refused by the defendant, and the coal was not shipped. No coal was mined for complainant except this first installment of 50 tons.

The defendant has provided uniform rules for the distribution of coal cars to the mines which it serves, assigning to each mine a rating which is determined by giving consideration to its capacity and to its actual production during a representative period. It is not contended that the rating of the Figart Run Coal Company's mine is inadequate or unfair.

Because of the unusual demand for coal during the past year the production of coal in the Clearfield region has increased. New

mines have been opened, abandoned mines rehabilitated, and even the farmers are digging bituminous coal and hauling it to the defendant's line. Many of the "country banks" are not served by railroad sidings, and their proprietors must haul their product by wagons to the railroad. Since it would be impracticable to assign ratings to these producers similar to those assigned to the mines where the coal is loaded by tipple, as it is at the mine of the Figart Run Coal Company, the number of cars allotted to these other producers is determined by their ability to load the cars. Thus, if at a given time the defendant has only half enough cars to supply the demand, a producer who can haul to the railroad and load one car of coal daily is given one car every two days. The complainant contends that he, not being a coal operator and therefore not having an assigned rating, should have been treated in substantially the same manner as the producers who haul their shipments to the defendant's rails; or, in any event, that the defendant should not have failed wholly to furnish him with any equipment. The defendant thinks it inadvisable to supply any cars to shippers who haul their coal to its rails, because it is said to take more time to load cars from wagons, thus detaining the equipment unduly, and reducing the cars available for other operators. The defendant recently attempted to amend its intrastate tariffs so as to withdraw the commodity rates on coal received from wagons, and to provide that such coal could be shipped only in box cars, but the Public Service Commission of Pennsylvania decided, after an investigation, that the proposed rules would be unlawful and ordered that they be canceled. Similar tariffs proposing like rules for application to interstate traffic were thereupon voluntarily withdrawn by the defendant, which is now, and was throughout the period in question, supplying cars to all kinds of coal producers, including "wagon-loaders."

That the complainant and the coal company understood when they entered into the contract in question that it might be construed as an attempt on their part to evade the defendant's rules for car distribution, and that they doubted the success of their plan, is clearly shown by the evidence. In the first place a clause inserted in the supplementary contract provided that the agreement was to be null and void "if through any contingency the cars delivered for Greenfield & Company should finally be charged against the Figart Run Coal Company's rating." Furthermore, the agreed price was \$2.50 per ton, just half the prevailing price at the time, the coal company having agreed to this figure because the successful operation of the scheme would have benefited it by enabling it to mine more coal than it could ship in the cars to which it was entitled under the defendant's rules. To produce the additional amount of coal called

for by the contract the coal company would have had to double its total output and double its usual force of 45 men. Moreover, the complainant was careful to provide in the contract that he would pay for the coal only after it was loaded on defendant's cars, so that he would be under no obligation to the coal company if the cars could not be obtained. Only 50 tons of coal were mined for complainant under the contract, the coal company apparently having thought it inadvisable to produce a larger quantity before determining the success of the arrangement. An unusual feature of the contract is a provision that the complainant, the purchaser of the coal, should secure cars and make arrangements for the transportation. It is the practice in this region for the coal operator to sell coal f. o. b. cars, and to arrange for its transportation. This practice was departed from in the present case because it was known that any cars ordered by the coal company would be counted against its distributive share. Never in its five or six years of operation has the coal company made a similar agreement, and the only witness for the company testified that he never knew such a contract to be made by any other operator. For the past 10 years the complainant has dealt almost exclusively in anthracite coal. At or about the time of this undertaking the complainant made a like contract for the purchase of bituminous coal from a mining company at Irvona, Pa., on defendant's line, but was unable to get cars for the reasons given by the defendant in this case. These were the only contracts made by the complainant for the purchase of bituminous coal in 10 years. The motives that prompted the complainant and the mining company in entering into the agreement in question are best explained by the complainant's testimony:

The reason I made this contract was that I could see these operations not producing what they should, losing their men; \* \* \* and I bought this coal to be dumped on the ground, so that I could get prompt car shipment \* \* \*. They had a mine there with a beautiful vein of coal \* \* \* and their men were sitting around idle. They complained to me that they were losing their men. I went down there for the purpose of buying some coal, and I went out and looked the situation over and saw the ground \* \* \*, and I finally worked out this proposition for the sake of keeping their men together and getting out the tonnage. \* \* \* An operator, of course, wants to mine and sell all the coal he can. He could not have shipped the additional tonnage under the car distribution. But I did not figure that I came in contact with any car distribution in any sense of the word, for the simple reason that I was buying coal in stock \* \* \*; and by doing that I could have assured Mr. Bower steady work for his men, because the only reason the men were leaving them was because they had not sufficient work, and I could have helped \* \* \* I have observed in the region during the last six months, they put cars in—well, they are only a certain percentage of a mine's rating; they come in spasmodically, and they have a proportion of men there who leave after a day's idleness, and then when the cars do come in they have

no men there to load them and, in consequence, the cars lie over; whereas, if any operator had a stock of coal, he could facilitate the movement of railroad cars. That was a perfectly logical argument, to my mind.

The complainant agreed to sell the coal in question to the Tyler Coal & Coke Company, a wholesale dealer in coal, which has offices in common with the complainant. In making this contract the Tyler Company understood the arrangement between the complainant and the Figart Run Coal Company, and that difficulty might be experienced in carrying it out, and for that reason avoided making contracts for reselling any of the coal except one carload. A representative of the Tyler Company stated that although his company considered the complainant in default under the contract, he did not know, in view of all the circumstances, that any attempt would be made to hold the complainant responsible in law for his failure to provide the coal. Except for the one lot of 50 tons, it is not shown that any of the coal to be mined under the contract was to be shipped outside the state of Pennsylvania.

It is deemed unnecessary to outline the other evidence of record, because the facts already set forth show that the complaint is without merit. The equitable distribution of coal cars is a difficult problem, and rules adopted by carriers to effect it must be impartially applied and enforced. The contract between the complainant and the coal company would have had the effect of giving an undue preference to the latter by permitting it to mine twice as much coal as it could ship in the cars allotted to it, and it was made primarily for that purpose. The carriers' distribution rules would soon break down if cognizance were given to demands for additional cars under such circumstances as are disclosed upon this record. The defendant's refusal to aid the complainant and the coal company in carrying out their plan was not only proper, but commendable.

The complainant relies on *Wright v. B. & O. R. R.*, 32 Penn. Super., 5, decided in 1906, in which the superior court of Pennsylvania sustained an award of damages obtained by the complainant in a lower court on the ground that the defendant failed to supply coal cars to the complainant, who had hauled coal in wagons to one of defendant's loading platforms and there tendered it for transportation, although cars were supplied to other shippers under substantially similar circumstances, in violation of a statute of the state of Pennsylvania. This case is readily distinguishable on at least three grounds from the one now before us: (1) In the *Wright Case* it does not appear, as it does in the present case, that the coal was purchased from a "rated" mine, to be mined and shipped in addition to the regular output of that mine; (2) in the *Wright Case* it does not appear, as it does here, that the contract of purchase was made in

47 I. C. C.



part for the purpose of evading the carrier's rules for the equitable distribution of its coal cars; (3) in the report in the *Wright Case* it does not appear, as it does here, that to supply cars to the complainant would tend to break down the defendant's rules for car distribution. Except for casual mention of the "rating" of certain mines the report in the *Wright Case* makes no mention of rules for car distribution, and the necessity of preserving the integrity of such rules seems to have played no part in the decision of the court.

The Commission should find that the defendant's failure to furnish cars for the shipment in question, except upon condition that they be counted against the distributive share of the coal company, was not unreasonable or otherwise unlawful, and the complaint should be dismissed.

CLARK, *Commissioner*:

The foregoing proposed report prepared by the examiner was served upon the parties. Complainant filed several exceptions thereto, mainly as to the weight accorded to parts of the record and as to the conclusion reached. No error of fact which could affect the conclusion is pointed out. The exceptions have been orally argued before the Commission, Division 2. The report, findings, and conclusion of the examiner are adopted as the report, findings, and conclusion of the Commission.

An order will be entered dismissing the complaint.

47 I. C. C.

## MICHIGAN PERCENTAGE CASES.<sup>1</sup>

*Submitted October 25, 1917. Decided November 28, 1917.*

In constructing their class rates and commodity rates between points in central freight association territory and points east of Buffalo, N. Y., and Pittsburgh, Pa., the defendants have divided central freight association territory into a number of rate groups, the rates to and from which bear a fixed relation to the rates between Chicago, Ill., and New York, N. Y. To each group is assigned a "percentage," which indicates the relation between its rates and the Chicago-New York rates. Upon complaints alleging that the percentages assigned to certain groups in the state of Michigan are excessive, and that they result in rates to and from Michigan points which are unreasonable and unduly prejudicial; *Held*, The rates are not shown to be unreasonable, but they are unduly prejudicial to the complaining cities. The percentages assigned to the Michigan rate groups should not exceed those prescribed herein. Fourth section applications reserved for further hearing.

*Frank A. Larish* and *James F. Dougherty* for Grand Rapids Association of Commerce, Marshall Chamber of Commerce, Battle Creek Chamber of Commerce, and Kalamazoo Chamber of Commerce; *Herman Mueller* for Lansing Chamber of Commerce; *Hal H. Smith* and *Harry F. Masman* for Michigan Manufacturers' Association; *Ernest L. Ewing* for Cadillac Chamber of Commerce, Cadillac Lumber Exchange, and Petoskey Business Men's Association; and *John B. Daish*, *J. Raymond Hoover*, and *John C. Graham* for Jackson Chamber of Commerce, complainants.

*Harris E. Galpin* for Muskegon Employers' Association; *Arthur T. Waterfall* for Detroit Board of Commerce; *John T. Ross* for Saginaw Board of Trade and Bay City Board of Commerce; *Elkinton*, *Hubbard & Mather* and *H. N. McEwen* for Manitowoc Chamber of Commerce and others; and *Ernest L. Ewing* for Traverse City Chamber of Commerce, interveners.

*Harry S. Noble* for Great Lakes Transit Corporation; and *John C. Bills*, *D. P. Connell*, *James H. Campbell*, *E. M. Davis*, *W. K.*

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<sup>1</sup>The proceeding embraces the following cases: No. 7294, Jackson Chamber of Commerce v. Michigan Central Railroad Company et al.; No. 7806, Marshall Chamber of Commerce et al. v. Michigan Central Railroad Company et al.; No. 9079, Grand Rapids Association of Commerce v. Baltimore & Ohio Railroad Company et al.; No. 9160, Cadillac Chamber of Commerce et al. v. Ann Arbor Railroad Company et al.; No. 9203, Petoskey Business Men's Association v. Ann Arbor Railroad Company et al.; No. 9293, Michigan Manufacturers' Association v. Ann Arbor Railroad Company et al.; and No. 9325, Lansing Chamber of Commerce v. Ann Arbor Railroad Company et al.

The proceeding also embraces Portions of Fourth Section Applications Nos. 607, 1771, 1481, 1561, 1563, 1572, 1625, 1787, 2060, 3596, 3799, 4286, 4460, and 4966.

*Williams, T. H. Burgess, and H. S. Bradley* for various rail carriers, defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

McCHORD, *Commissioner*:

The facts stated in the following paragraphs were made the subject of a tentative report which was served on the parties, and no substantial changes have been found necessary upon a review of the exceptions filed and the argument thereon.

What is commonly known as central freight association territory may be roughly described as that portion of the United States lying east of the Mississippi River, north of the Ohio River, and west of a line drawn through Buffalo, N. Y., and Pittsburgh, Pa., but excluding nearly all of the state of Wisconsin and the northern peninsula of Michigan. The territory east of Buffalo and Pittsburgh, west of New England, and north of the main line of the Norfolk & Western Railway, is generally known as trunk line territory. For the purposes of this report it will be convenient to designate the region east of Buffalo and Pittsburgh, including New England, as "eastern territory."

In constructing their class rates and most of their commodity rates between points in central freight association territory and points in eastern territory the defendants have divided both regions into rate groups. The rates to and from the groups in central freight association territory bear a fixed percentage relationship to the rates between Chicago, Ill., and New York, N. Y., the latter constituting the basis upon which practically all of the interterritorial rates are constructed. The outlines of these groups are shown on the accompanying map, the figures inserted in each group indicating the percentage which the rates to and from that group bear to the rates between Chicago and New York. The map shows only the eastbound adjustment, but as the outlines of most of the groups are nearly the same on westbound traffic as on eastbound traffic this map may be conveniently used for reference in connection with all of the rates here in issue.

THE ISSUES.

The complaints in these proceedings were filed by commercial organizations of the cities of Grand Rapids, Jackson, Kalamazoo, Battle Creek, Marshall, Lansing, Cadillac, and Petoskey, all in the state of Michigan, and by the Michigan Manufacturers' Association, whose members are manufacturers and jobbers located in nearly all parts of the lower peninsula. These complaints, generally speaking, allege that the class rates and commodity rates between points in the lower

peninsula of Michigan and points in eastern territory are unreasonable, unjustly discriminatory, and unduly prejudicial. The principal basis of this contention is that the rates to and from points in Ohio and Indiana have been determined by giving consideration to the short-line distances to New York from certain so-called basing points in those states; that in constructing the rates to and from the groups in Michigan the defendants have failed and refused to consider the short-line distances from the basing points in those groups, but have assigned to the Michigan groups arbitrary percentages higher than those accorded to the groups in Ohio and Indiana for like distances; and that by reason of this alleged difference in the method of determining the percentages of the zones in Ohio and Indiana on the one hand and those in Michigan on the other hand the defendants have subjected the cities and towns of Michigan and their people to undue prejudice and disadvantage and to the payment of unreasonable rates.

The most comprehensive of these complaints is that filed on behalf of the Michigan Manufacturers' Association. It is alleged that the members of that association are in competition with manufacturers and jobbers located in various parts of central freight association territory, and particularly with those located in the central and northern parts of the states of Ohio, Indiana, and Illinois; that the class rates and the commodity rates based thereon between points in eastern territory and points in the states of Ohio, Indiana, and Illinois are constructed upon the so-called McGraham scale, to be discussed later in this report; that the rates to and from points in the southern peninsula of Michigan exceed the rates based upon the McGraham scale; that as a result the points in the lower peninsula and the members of the complainant association are subjected to undue prejudice and disadvantage; and that an undue preference and advantage is given to the cities and towns in other parts of central freight association territory and to the manufacturers and jobbers there located. The complaint refers to the other complaints embraced in this proceeding and calls attention to the observation made by the Commission in *Saginaw Board of Trade v. Grand Trunk Ry. Co.*, 17 I. C. C., 128, to the effect that a reduction in rates to points in the Saginaw Valley would disturb the rates to other points on whose behalf no complaint was made; and the complainant says, in effect, that its object in filing a complaint comprehensive in character is to have the whole situation fully presented to the Commission, so that if necessary a complete readjustment may be made of the rates to and from all parts of the lower peninsula.

The complaint of the Jackson Chamber of Commerce was filed in 1914 "on behalf of its members, and the manufacturers, dealers,

and citizens of the city of Jackson." It is alleged that the rates between Jackson and specified points in eastern territory, based on 92 per cent of the Chicago-New York scale, are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceed rates based on 84 per cent of that scale. This case was heard, briefed, and argued, but decision was withheld because we were advised that complaints more comprehensive in character and involving the same issues were about to be filed.

Kalamazoo, Marshall, and Battle Creek are located in the 96 per cent group, Kalamazoo being near the center of the zone, Marshall near its eastern boundary, and Battle Creek lying between them. In their joint complaint, filed in March, 1915, it is alleged that the class rates between these three points and points in eastern territory are unreasonable, unjustly discriminatory, and unduly prejudicial; that the 96 per cent zone is too large; and that a new group including these points should be established with rates based upon 85 per cent of the Chicago-New York scale. It is particularly alleged that the rates to and from certain points in Ohio and Indiana are constructed upon the McGraham principle, and that the defendants' failure to use the same basis in determining the rates to and from Kalamazoo, Marshall, and Battle Creek subjects those points to undue prejudice. This case was also heard, briefed, and argued, and decision withheld pending the filing and disposition of the other complaints embraced in the present proceeding.

Like the other three points to which reference has just been made, Grand Rapids is located in the 96 per cent rate group. The complaint filed by the Grand Rapids Association of Commerce, as amended, alleges that the rates between that point and eastern territory are unreasonable to the extent that they exceed 88 per cent of the Chicago-New York scale and that they are likewise unjustly discriminatory and unduly prejudicial as compared with the rates to and from other points in Michigan, particularly Detroit, and certain points in other parts of central freight association territory.

In the complaint of the Lansing Chamber of Commerce it is alleged that the class rates and commodity rates between Lansing and points in eastern territory, now constructed by taking 95 per cent of the rates applicable between Chicago and New York, are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceed 82 per cent of the Chicago-New York scale. It is particularly alleged that the rates as at present constituted give an undue preference to Detroit and certain other cities in central freight association territory.

In the complaint filed on behalf of the Cadillac Chamber of Commerce and the Cadillac Lumber Exchange, it is alleged that the

class rates between Cadillac and points in eastern territory are made by taking 110 per cent of the rates applicable between Chicago and New York; that the commodity rates are usually constructed in the same way as the class rates, except the rates on lumber and other forest products, which are generally made upon a 100 per cent basis; that both the class rates and the commodity rates between Cadillac and points in the east are so constructed as to prejudice unduly the industries there located and to give an undue preference to shippers located in other parts of the state of Michigan. It is contended that the rates between Cadillac and points in the east should not exceed the New York-Chicago scale and that the rates on lumber should not exceed 90 per cent of that scale. It is particularly alleged that the rates are in violation of the long-and-short-haul provision of the fourth section of the act in that the rates to and from Cadillac are higher than the rates to and from more distant points, such as Kewaunee and Manitowoc, Wis., the rates to the latter points being generally the same as the rates between New York and Chicago, whereas the rates to and from Cadillac are 10 per cent higher. By the route of the Ann Arbor Railroad, Cadillac is intermediate to these points on the west bank of Lake Michigan, and certain fourth section applications by which the defendants seek authority to continue lower rates to and from the west bank points than are contemporaneously maintained to and from Cadillac were heard in connection with this proceeding.

Petoskey is located in the extreme northern part of the lower peninsula of Michigan in a rate group taking 120 per cent of the Chicago-New York rates. The complaint filed on behalf of the Business Men's Association of that city alleges that the rates between Petoskey and points in eastern territory are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceed 100 per cent.

The Chamber of Commerce of Traverse City, which was permitted to intervene, asks that the rates to and from Traverse City be reduced from 115 per cent to 100 per cent. The Manufacturers Association of Sheboygan, Wis., the Manistique Chamber of Commerce, the Menominee Commercial Club, the Green Bay Association of Commerce, and the Marinette Civic & Industrial Association intervened for the purpose of opposing any change in the rate structure whereby the cities on the west bank of Lake Michigan would be deprived of their present basis of rates or of the relative advantage which they now enjoy. The Muskegon Employers' Association intervened in opposition to the suggestion of the Grand Rapids Association of Commerce that a new 88 per cent group be constituted, so formed as to include Grand Rapids but to exclude Muskegon.



## THE PROSPERITY OF THE STATE OF MICHIGAN.

Before proceeding to a consideration of the rate adjustment and weighing the contentions of the various parties with respect to the principal issue, it may be well to observe that the industrial progress of the state of Michigan during the past few years has been remarkable. For the period 1909-1914 Michigan surpassed all other states in industrial growth. Witness after witness called by the complainants to express dissatisfaction with the rate structure testified that with few exceptions there has been a steady and healthy growth in the annual sales of the Michigan concerns. Many of them told of large increases of capital invested in their business, of increased capacity, of increased sales. One of the large wholesale grocery concerns of Grand Rapids, whose sales 12 or 15 years ago amounted to \$600,000, sold \$2,000,000 worth of groceries in 1916. Witnesses from the northern part of the lower peninsula stated that the agricultural progress of that part of the state is notable, and that it is one of the causes of like progress in other branches of industry. In the brief filed on behalf of the Lansing Chamber of Commerce we are told that during the last eight years there has been "a truly wonderful industrial development, particularly in the southern part of the state."

Statistics show that the growth of the several cities on whose behalf these complaints were filed has been comparable with the progress of the manufacturing concerns. The population of Grand Rapids was 87,565 in 1900, 112,571 in 1910, and 135,000 in 1915. The bank deposits were \$13,137,813 in 1900, \$27,906,387 in 1910, and \$38,468,270 in 1916. The building permits totaled \$735,951 in 1900, \$2,255,621 in 1910, and \$3,476,814 in 1916. The secretary of the Grand Rapids Association of Commerce testified that the city's growth during the last five years was the most rapid since its incorporation in 1850. Like statistics for other Michigan cities would but continue the story of progress and prosperity.

It is but fair to observe, also, that a number of the witnesses called by the complainants testified in effect that they regarded the rate adjustment as discriminatory, not because it prejudiced them unduly in their operations, but because they had been advised, in one way or another, that the rates between the east and Michigan points were constructed on a higher basis than those between the eastern territory and points in Ohio and Indiana. It was uniformly testified, of course, that the profits were less than they would be if the freight rates were lower, but the evidence submitted by many of the witnesses shows that the commodities which they ship are of such a character that they can be distributed to nearly all parts of the country regardless of the freight rates, and that the Michigan ship-

pers have been able, in spite of the rate adjustment, to increase their sales and meet successfully the competition of other producers in common markets. We shall observe later, however, that the relationship between the rates is of undoubted importance to some of the Michigan concerns. The complainants point out, also, that the prosperity has not been altogether one-sided. Not only have the small railroads of the early days been consolidated into great systems, as we shall later show, but the growth of the industries in all parts of the state has meant increased tonnage and increased revenues for the defendants.

#### CHANGED TRANSPORTATION CONDITIONS.

The transportation conditions now existing in southern Michigan are materially different from those which prevailed 30 or 40 years ago. To-day nearly all of the railroads in the southern part of the state constitute a part of the systems of four trunk lines, the New York Central, the Pennsylvania, the Grand Trunk, and the Pere Marquette. The lines of three of these systems extend from Michigan to the very heart of the eastern territory in which the Michigan manufacturers dispose of a large part of their products, and from which they draw a considerable portion of their raw materials. When the rate groups in this territory first came into existence the conditions were wholly different, the railroads consisting in most part of short, independent lines. The lines now constituting the Michigan Central, for example, were short roads whose lines did not extend east of Detroit, and which were not affiliated with any of the eastern trunk lines.

An examination of the history of the Lake Shore & Michigan Southern, now a part of the New York Central system, shows how this process of development was carried on. This company was formed in 1869 by a consolidation of the Michigan Southern & Northern Indiana, the Cleveland & Toledo, the Cleveland, Painesville & Ashtabula, and the Buffalo & Erie. Between 1869 and 1877 it acquired the Detroit, Monroe & Toledo and the Northern Central Michigan, and had leased the Mahoning Coal Railway and the Kalamazoo, Allegan & Grand Rapids. The Fort Wayne & Jackson Railroad was leased to the Lake Shore in 1882 and in 1881 the Detroit, Hillsdale & Southwestern, extending from Ypsilanti to Bankers, 65 miles, was acquired by the Lake Shore under lease. At that time the Lake Shore was also operating a line extending from the Detroit River to Chicago, 250 miles, under the name of the Chicago & Canada Southern Railway. In 1888 the Michigan & Ohio Railroad, extending from Dundee to Allegan, 133 miles, was opened. This line later became the Detroit, Toledo & Milwaukee, and still later it was ac-

quired by the Lake Shore. By 1891 the Lake Shore had also acquired the Detroit & Decatur Railroad and the Sturgis, Goshen & St. Louis Railroad.

Other evidence of a similar nature shows that the Grand Trunk, the Michigan Central, and the Pere Marquette were gradually developed and consolidated into railroad systems by the acquisition of a number of small lines. This evidence need not be reproduced here. It suffices for the purposes of this report to observe that the consolidation of many small railroads into great trunk lines has almost completely re-formed the railroad map of Michigan, and that there has been a marked change in the transportation conditions since the establishment of the rate adjustment here under consideration is indisputable. The great increase in the volume of tonnage should also be considered. Between 1888 and 1916 the tonnage moving from and through Chicago and Chicago junctions to points in eastern territory increased approximately 700 per cent in volume, and, as previously stated, the recent industrial development in Michigan has increased considerably the tonnage of the Michigan lines.

Four prominent trunk lines, the Grand Trunk, the Michigan Central, the Wabash, and the Pere Marquette extend across the state of Michigan and north of Lake Erie to the Niagara frontier.<sup>1</sup> South of Lake Erie are the New York Central, the New York, Chicago & St. Louis, the Fort Wayne route of the Pennsylvania system, the Pittsburgh, Cincinnati, Chicago & St. Louis, the Baltimore & Ohio, the Chesapeake & Ohio, and the Cleveland, Cincinnati, Chicago & St. Louis. The trunk lines serving the state of Michigan must be recognized as established routes over which through traffic moves in volume. Over their lines are operated many "fast freight" lines; and although this expression means less to-day than in the earlier days of severe competition between the several routes, the fact remains that joint rates are published over these routes, through traffic moves over them, and the trade names originally used to designate them, such as "Merchants' Despatch" and "Blue Line," are retained.

#### HISTORY OF THE PERCENTAGE ADJUSTMENT.

A careful study of the history of the rate adjustment with which we are dealing in this case was recently made by the chief of the tariff bureau of the Pere Marquette Railroad, one of the defendants' principal witnesses in this proceeding, and the results of his study, which was based on an extended examination of old tariffs and other documents, were submitted as part of the evidence.

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<sup>1</sup>The Wabash traverses only the southeastern part of the state and can not properly be regarded as a typical Michigan carrier. The Pere Marquette reaches Buffalo in connection with the Michigan Central.

There is no evidence of a percentage relationship between the rates to and from points in central freight association territory prior to 1871, although through rates were published to those points from the eastern cities before that date. In that year John T. McGraham, a clerk in the Pittsburgh office of the Union line, a fast freight line of the Pennsylvania Railroad, compiled a table, based on the through rates then in effect, showing the percentages which the rates from New York to 84 so-called basing points in central freight association territory bore to the New York-Chicago rates. Of these points 18 were in Michigan, Grand Rapids being the farthest north. On December 15, 1871, this table was officially adopted by the eastern trunk lines as the basis to be employed thereafter in the construction of the rates on westbound traffic. The table showed the distances to all of the points, and the distance from New York to Chicago was given as 963 miles, which was probably arbitrary, and certainly not the short-line distance; and the distances to the other points seem also to have been arbitrarily determined. The distance assigned to each of the 84 points bore the same relationship to the distance of 963 miles from New York to Chicago as the rates then in effect to the various points bore to the New York-Chicago rates, and it is not improbable that the distances were so fixed as to bring about that result. The rates to points other than the 84 basing points were determined by adding to the basing point rates the local rates from the basing points to the local stations, and no attempt was made to avoid departures from the long-and-short-haul principle.

As early as 1871, when the McGraham table was officially adopted, there was a tendency toward the recognition of rate groups. The table shows, for example, that Kalamazoo, Battle Creek, Lansing, Charlotte, and Cassopolis, all in the state of Michigan, took the same rates on westbound traffic, and that a distance of 903 miles was assigned to all of them, although their actual distances were quite different. The same tendency toward grouping existed in Ohio and Indiana.

At a conference between the carriers in trunk line territory and those in what is now central freight association territory, held on April 13, 1876, a definite percentage basis was first adopted for the construction of rates on eastbound traffic. There is no evidence that Mr. McGraham had any part in this work. The Pennsylvania's distance of 920 miles from Chicago to New York was adopted as the standard. This was not the short-line distance, but it was the shortest single-line distance. The table prepared at that time for use in the construction of rates on eastbound traffic showed 98 basing points, of which 8 were in Michigan. The distances assigned to the various points were not arbitrary, but were the actual distances via the

Pennsylvania lines, and these distances were used in making the rates. For example, the distance from Crestline, Ohio, to New York in 1876 via the Pennsylvania lines was 641 miles. If 641 is divided by 920, the Chicago-New York distance, the quotient is 69.67. Under a generally recognized rule for the disposition of fractions this was made 70, and the rates from Crestline to New York were made 70 per cent of the Chicago-New York rates. The distances from points not located on the Pennsylvania were figured by taking their distances to the nearest Pennsylvania junction and the Pennsylvania distances beyond. From most of the points in Ohio and Indiana the distances thus figured were the actual short-line distances, and inasmuch as these mileages were used in constructing the rates it may be said that the basing points in Ohio and Indiana were accorded rates which recognized their exact short-line distances to New York. With respect to the rates on eastbound traffic, therefore, there was as yet no such tendency toward grouping as was caused in the structure of westbound rates by the arbitrary assignment of the same distances to points differently located.

On June 12, 1879, at a meeting of the joint executive committee of the lines in trunk line territory and in what is now known as central freight association territory an important change was made in the method of determining the percentages used in the construction of rates on eastbound traffic. The nature of the change is best explained in the minutes of the meeting:

Mr. Blanchard, on behalf of the trunk line committee, \* \* \* submitted the following report:

First. That from all points being less distant from New York than Chicago new percentages be adopted for making up rates on eastbound freight upon the following basis:

The percentage from points of the same, or no greater distance than Chicago, to continue as heretofore.

Second. That 6 cents per 100 pounds be first deducted from an assumed rate of 25 cents per 100 pounds, Chicago to New York, said deduction to represent the fixed charges at both ends of long or short hauls.

Third. That after such deduction the rate per mile, which the remainder of 19 cents per 100 pounds produces from Chicago to New York, shall be charged per mile from all common points named in the first section, according to the percentages of distance shown by the table adopted at Chicago April 13, 1876, to which result so computed the 6 cents per 100 pounds of fixed charges first above deducted shall be again added, and the percentage of the Chicago rate of 25 cents produced by such addition shall thereafter constitute the percentage of the Chicago rate which shall subsequently be charged from the points named in the first section.

The application of this new method, which operated to increase the rates materially, and which was adopted principally for that reason, can best be explained by an illustration. After deducting the



terminal allowance of 6 cents from the assumed rate of 25 cents<sup>1</sup> the remainder of 19 cents represented the carriers' remuneration for the line haul. The distance via the Pennsylvania from Chicago to New York being 920 miles, the earning per mile for the line haul was 0.0206 cents. Multiplying this earning per mile by 641, the distance from Crestline to New York, the result is 13.2 cents, which was assumed to be the earning per 100 pounds for the line haul from Crestline to New York. Adding to this the arbitrary terminal allowance of 6 cents, the sum is 19.2 cents, assumed to represent the total remuneration to the carrier for hauling a hypothetical shipment of 100 pounds of freight from Crestline to New York and for terminal expenses at both ends of the haul. The assumed rate from Chicago to New York having been 25 cents, the relationship between the rates from Crestline and those from Chicago was determined by dividing 19.2 by 25, the quotient being 76.8. Crestline was accordingly made a 77 per cent point, and its rates on eastbound traffic were determined by taking 77 per cent of the Chicago-New York rates. It will be noted that the application of the new rule resulted in increasing Crestline's basis from 70 per cent to 77 per cent.<sup>2</sup> This formula of 1879 is referred to by the complainants and others as the McGraham formula, or the McGraham "scale." Mr. McGraham's compilations seem to have been limited, however, to the westbound rates, and as the formula was applied only to the rates on eastbound traffic it is not correct to associate Mr. McGraham's name with that formula, which will be referred to subsequently in this report, for want of a better name, as the percentage formula. The percentages of the other basing points were similarly determined, except that the percentage formula was not applied to points taking the 100 per cent basis or higher, the rates from those points continuing on the strict mileage basis adopted in 1876 and previously described.

In 1880 Mr. McGraham compiled and issued a second table in which were shown the percentages assigned to 189 basing points in the construction of westbound rates, 105 more points than were included in his table of 1871. Of the total number of basing points 32 were in Michigan, as compared with 18 in 1871. Except for the addition of these new base points the structure of rates westbound was not changed in 1880, but the addition of these base points increased the tendency toward grouping. An arbitrary distance of 963 miles was assigned, for example, to Holland and Muskegon, Mich. As the same distance had previously been applied to Grand Rapids

<sup>1</sup> In 1879 there were only four classes, and the fourth-class rate from Chicago to New York was 25 cents.

<sup>2</sup> Crestline is now in the 76 per cent group.



and to Chicago, we observe here the beginning of a 100 per cent rate group, the points in western Michigan being blanketed with Chicago.

In the same year, 1880, there were a number of reductions in the rates on eastbound traffic. The Detroit basis was reduced from 81.5 per cent to 75.5 per cent; the Cleveland basis from 73.5 to 70; the Toledo basis from 81.5 to 75.5; and the Sandusky basis from 78 to 75.5. The reductions at Detroit and Toledo will be discussed in greater detail later in this report. There were also reductions at Akron, Crestline, and Mansfield, and other points intermediate to the lake ports by the lines of certain carriers.

In 1883 a number of new basing points were added with respect to the eastbound traffic, making 129 in all, and there was a further tendency toward grouping, due to the application of certain basing point rates at intermediate points whose rates had previously been higher. Many rates were thus reduced, and for the purpose of offsetting the consequent loss of revenue to them the carriers arbitrarily increased many of the rates from the basing points. Piqua and Dayton, Ohio, were increased from 83 per cent to 84 per cent; Toledo and Detroit from 75.5 to 78, their present basis; and Grand Rapids, Mich., from 96 to 100. In making these increases the carriers necessarily disregarded the short-line distances. Because of the addition of so many new basing points in 1883 and because of the reduction of a number of rates to eliminate departures from the long-and-short-haul principle, the outlines of the various eastbound rate groups as at present constituted were fairly well defined at that time.

In 1885 Mr. McGraham's third table showing the westbound percentages was issued, 149 basing points being added, of which 20 were in Michigan. The mileages used in the westbound table were still arbitrary, and the new basing points were added simply by assigning to them the arbitrary distances already assigned to near-by basing points.

On March 10, 1886, the westbound basis was completely revised by substituting for it practically the same rate structure as that shown in the table of eastbound rates adopted in 1883. The groups were therefore well defined with respect to both eastbound and westbound rates in 1886. The effect of this change was to substitute for the arbitrary distances theretofore used in constructing the westbound rates, the distances via the Pennsylvania lines first adopted and applied to the eastbound rates in 1876, with the exception, of course, of the many instances in which the arbitrary increases or reductions, previously mentioned, caused departures from the distance basis. These increases and reductions, however, were not so great in amount

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as to cause radical departures from the mileage basis, and the evidence shows, as will be indicated later, that even at the present time the percentages assigned to the various points in Ohio and Indiana conform rather closely to the figures resulting from a strict application of the formula adopted in 1879.

An examination of the large map will show that in many instances the western edges of the rate groups in central freight association territory are north-and-south lines of railroad, and in a number of instances the points formerly recognized as basing points are located in the western part of the group where the north-and-south line meets an east-and-west line. A glance at the map will show that this is true of Crestline, Columbus, Springfield, Celina, and Lima, all in Ohio, and of Richmond, Muncie, Alexandria, Logansport, and Indianapolis, all in Indiana. In some instances there are several such base points on the western edge of the group, as in the 90 per cent group. The sizes and shapes of the various groups were determined by many different factors, chief among which was competition between carriers. Commercial competition, observance of the long-and-short-haul principle, and other factors also exerted an influence.

The gradual development of the rate groups and the various influences which helped to determine their size and shape can best be understood by examining the history of one of the groups. At the hearing the 90 per cent eastbound group in eastern Indiana and western Ohio was one of several selected for this purpose. In 1876 the distances and the percentages assigned to the various basing points located near the western edge of the group as at present constituted were as follows: Cambridge City, 780 miles, 85 per cent; Hagerstown, 773 miles, 84 per cent; Newcastle, 784 miles, 85 per cent; Fort Wayne, 772 miles, 84 per cent; Waterloo, 800 miles, 87 per cent. In 1879 the percentages were changed to 88.5 at Cambridge City, 88 at Hagerstown, 88.5 at Newcastle, 88 at Fort Wayne, and 90 at Waterloo. In 1883 all of these points were made 90 per cent except Waterloo, which was advanced to 92 per cent. It is said that the increase of several of these points to 90 per cent was due in part to the influence of the Lake Erie & Western, the north-and-south line constituting the western edge of the group. The distance from Muncie to New York, 798 miles, warranted the maintenance of a 90 per cent basis at that point, and the establishment of a 90 per cent basis at the other basing points on its line permitted the Lake Erie & Western to "work its line" in both directions, that is, to handle its traffic either northbound or southbound without violating the long-and-short-haul principle. Similar situations doubtless account for

the other instances in which a north-and-south line constitutes the edge of a group. Butler and Auburn Junction were added at 90 per cent because they were intermediate to Waterloo. Kendallville, Avilla, and Laotto, now in the 92 per cent group, were made 90 per cent. In 1883, when the general increase was made, these three points were advanced to 92 per cent, as were also Waterloo and Butler, now 90 per cent. In 1887 Waterloo and Butler were reduced to 90 per cent because intermediate to Fort Wayne via the New York Central. Decatur was made 90 per cent because intermediate to Fort Wayne via the north-and-south line of the Grand Rapids & Indiana. Through these various changes, some of them arbitrary and others brought about by competitive influences, the 90 per cent group came into being.

Since a large part of the evidence has been addressed to the 96 per cent group in Michigan, and since four of the cities on whose behalf these complaints were filed are embraced therein, it may be well to consider briefly the history of that group. In 1876 there were four basing points in the territory now included in the 96 per cent group, their distances to New York and their percentages being as follows: Grand Rapids, 879 miles, 95 per cent; Plainwell, 863 miles, 92 per cent; Battle Creek, 821 miles, 89 per cent; and Nottawa, 837 miles, 91 per cent. In 1879 Grand Rapids was increased to 96 per cent,<sup>1</sup> Plainwell to 94 per cent, Battle Creek to 92 per cent, and Nottawa to 93 per cent. In 1883, when the general increase was made, all were increased to 100 per cent, and Allegan, Kalamazoo, Schoolcraft, Three Rivers, Cassopolis, and Niles were added as basing points at 100 per cent. Grand Haven and Muskegon were added in 1887 at 100 per cent, because of commercial competition with Grand Rapids. In 1891 all of these points were arbitrarily reduced to 96 per cent, the present basis. As the distance from Alma did not exceed that from Grand Rapids, and as it was considered advisable to keep Muskegon and Grand Rapids on a parity for commercial reasons, both Muskegon and Alma were placed on the 96 per cent basis, and the line of the Grand Trunk from Muskegon to Greenville, and of the Pere Marquette extending eastward from Greenville through Alma, became the northern boundary of the group.

#### PREVIOUS CASES INVOLVING THE PERCENTAGE ADJUSTMENT.

The propriety of the percentage adjustment was first presented for our determination in 1888 in *Detroit Board of Trade v. Grand Trunk Railway Co.*, 2 I. C. C., 315, in which it was alleged that Detroit was subjected to undue prejudice as compared with Chicago, because the

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<sup>1</sup> The distance from Grand Rapids via Toledo and the Pennsylvania lines, 879 miles, entitled it to 96 per cent.

short-line distance from New York to Detroit was only 70 per cent of the distance from New York to Chicago, while the rates to and from Detroit were constructed on a 78 per cent basis. In dismissing the complaint we said:

This widely extended system of freight rates is one that has been the result of long experience in the operation of railroads after numerous rate wars and fierce competitive struggles. They have these evidences of reasonableness, and in addition to these whatever inferences may naturally arise from the fact that they have been generally acquiesced in as reasonable by the great communities and sections of the country in which they exist, since the act to regulate commerce, no other complaint of their unreasonableness than this having been made to the Commission.

In 1908 a complaint was filed by the Saginaw Board of Trade and the Flint Improvement League, alleging that on the basis of their short-line distances to New York those points were entitled to a lower percentage basis than had been accorded them by the carriers. *Saginaw Board of Trade v. Grand Trunk Ry. Co.*, 17 I. C. C., 128. That complaint was also dismissed, on the ground that the short-line distance to New York was not the sole factor to be considered in determining the rates, that Saginaw and Flint were not located on the main channels of through traffic, that the complaining cities had prospered under the rate adjustment, and that to reduce the rates would disturb the rates from other points and make heavy inroads on the defendants' revenues. In our report in that case we said:

The fact that no group rates in this country have been subjected to less criticism than the rates to and from the percentage basis territory and the Atlantic coast is some evidence of the care with which the system has been developed. So far as a cursory examination of the records of the Commission has disclosed, there have been until this petition was filed, but three other formal proceedings since the organization of the Commission in 1887 in which complaint was made of the percentage assigned to a particular group. *Detroit Board of Trade v. Grand Trunk Ry. of Canada*, 2 I. C. C. Rep., 315; *Pratt Lumber Co. v. C., I. & L. Ry. Co.*, 10 I. C. C. Rep., 29; *Green Bay Business Men's Association v. L. S. & M. S. Ry. Co.*, 15 I. C. C. Rep., 59. Moreover, the enormous commerce that proceeds to and from central freight association territory has not only adjusted itself to this system of rates, but shippers engaged in that commerce have thoroughly understood it for a score and more of years. While traffic and transportation conditions will doubtless change from time to time and thus necessitate alterations in the zone boundaries, such modifications must necessarily be made with deliberation and only upon adequate grounds.

In *Traugott Schmidt & Sons v. M. C. R. R. Co.*, 23 I. C. C., 684, decided in 1912, we held that the rates on wool from Detroit to eastern points should not exceed 78 per cent of the rates from Chicago. We said:

The real question is upon the discrimination. With very few exceptions, rates from Detroit to these points in question are 78 per cent of corresponding rates from Chicago. This percentage adjustment between central freight associa-  
47 I. C. C.



tion territory and the east has been long in effect and has given general satisfaction. Carriers have often insisted before us that this system of rate making ought not to be disturbed, nor even broken in upon in special cases without strong reasons for so doing, and this Commission has uniformly sustained that contention. Our opinion is the same now.

In *Springfield Commercial Asso. v. P. R. R. Co.*, 28 I. C. C., 511, we held that the rates to and from Springfield, Ill., then a 117 per cent point, should not exceed 113 per cent of the Chicago-New York scale. In reaching that conclusion we said:

We are reluctant to interfere with these percentage groups. To change the relation of Springfield will probably require a change as to several other localities and a general recasting of these groups in southwestern Illinois. But we are unable to resist the conviction that the disparity is too wide.

#### APPLICATION OF THE PERCENTAGE FORMULA IN THIS PROCEEDING.

The complainants and the witnesses who testified in their behalf expressed the belief that the rates enjoyed by their competitors in Ohio and Indiana were constructed by a more or less exact application of the percentage formula, and they contend that the defendants have refused to employ the same formula in constructing the rates to and from points in Michigan. In one of the briefs filed on behalf of several of the complainants the view is expressed that the only issue presented for our determination in these cases is whether the complaining cities "are entitled to have applied to them class rates to and from the north Atlantic seaboard on the same basis as is and has long been applied to other places in central freight association territory." The defendants, on the contrary, take the position that the rates between eastern territory and points in central freight association territory are not, and never have been, constructed strictly on a mileage basis, and that the complainants' conviction that the present rate structure results in undue prejudice to them is due to their misapprehension of the principles which guided the carriers in constructing the rates in question.

As is so often the case when diametrically opposite views are thus expressed, the truth lies between them. It is true that the rates to and from points in the states of Ohio and Indiana are not built upon a strict mileage basis. No other evidence is needed to prove this than the existence of the large rate groups to which reference has already been made; and the foregoing study of the history of the rate adjustment shows that rates were frequently fixed arbitrarily, and often without strict regard to distance. Large rate groups exist in eastern territory as well as in central freight association territory; and the "port differential" adjustment, whereby the rates from points in central freight association territory to certain ports south of New

York are made lower than the New York rates by fixed arbitraries of long standing, is a further indication that other factors than distance have had their influence on the rate structure.

It is hardly necessary to say that the percentage formula can not be accepted by the Commission as a measure of the reasonableness of rates in this territory, or as the criterion to be used in determining their lawfulness in other respects. We observed in the *Saginaw Case* that "the (percentage) system has no official character—that is to say, its bases have not been filed with the Commission"; and at best the formula can be regarded only as a conventional basis employed years ago in building a rate structure which has since been so developed and modified that it now bears little evidence of the precise plan originally used in constructing it. It necessarily follows that the complainants are not warranted in demanding that the percentage formula be used in gauging the reasonableness of the rates to and from Michigan, or in determining the proper relationship which those rates should bear to others in central freight association territory. If, however, the complainants are able to show that the rates per mile of haul between points in Michigan and New York are higher than the corresponding rates enjoyed by competing cities in Ohio and Indiana, and that the difference in transportation conditions does not warrant the difference in rates, they are entitled to relief; and in determining those questions it is not necessary even to consider the percentage formula. It will be interesting to observe, however, whether the rates accorded to points in this territory are approximately the same as the formula would give; and in view of the emphasis laid by the various complainants upon their contention that the points in Ohio and Indiana were given the benefit of their short-line distances to New York, whereas there were assigned to the Michigan cities mileages applying over the circuitous route of the Pennsylvania system, it will be of interest to weigh the evidence bearing upon that contention. At our request the defendants have prepared a statement showing the distances actually used in 1876 and 1879 in constructing the rates from representative points in this territory, together with the short-line distances. The statement is, in part, as follows:

47 I. C. C.

From—	Mileage actually used 1876-1879.	Distance via Pitts- burgh and P. R. R. 1876-1879.	Shortest route in 1876-1879.
Akron, Ohio.....	571	573	573
Alton, Ill.....	1,073	1,079	1,079
Battle Creek, Mich.....	821	830	799
Bellefontaine, Ohio.....	710	706	706
Champaign, Ill.....	951	951	951
Charlotte, Mich.....	828	830	783
Cincinnati, Ohio.....	765	765	765
Columbus, Ohio.....	645	645	645
Crestline, Ohio.....	641	641	641
Dayton, Ohio.....	716	716	715
Detroit, Mich.....	679	679	679
Forest, Ohio.....	682	682	682
Fort Wayne, Ind.....	772	772	772
Grand Rapids, Mich.....	878	879	825
Indianapolis, Ind.....	833	833	833
Jackson, Mich.....	784	785	754
Lafayette, Ind.....	896	880	880
Lansing, Mich.....	821	822	764
Logansport, Ind.....	842	842	842
Mansfield, Ohio.....	627	627	627
Newark, Ohio.....	612	612	612
Nottawa, Mich.....	837	838	838
Peru, Ind.....	835	834	<sup>1</sup> 828
Piqua, Ohio.....	718	718	718
Plainwell, Mich.....	863	864	832
Rushville, Ind.....	801	803	<sup>1</sup> 795
Shelbyville, Ind.....	821	822	<sup>1</sup> 814
Springfield, Ohio.....	690	690	690
Toledo, Ohio.....	714	714	714
Xenia, Ohio.....	700	700	700

<sup>1</sup> Also via Pittsburgh.

An examination of this statement shows that the short-line distances were used in nearly every instance in determining the percentage basis of points in Ohio, Indiana, and Illinois, whereas distances materially in excess of the short-line distances were employed in determining the rates from the Michigan points, except Nottawa and Detroit.<sup>1</sup> Attention is called to the fact that the shortest routes from the points in Ohio, Indiana, and Illinois were in nearly all instances those through Pittsburgh, whereas from Michigan points the Pittsburgh routes were relatively long.

Throughout this proceeding counsel and witnesses for the defendants have insisted that "Michigan has been treated, and is now treated, precisely like the rest of central freight association territory in the making of these rates." Upon analysis this is found to mean nothing more nor less than that the Pennsylvania distances were uni-

<sup>1</sup> Nottawa is not one of the complainants in this case, and we shall see later that the relatively low rates from Detroit are a matter of concern and dissatisfaction to the other Michigan cities.

formly employed in the determination of the group percentages; and in attempting to decide whether or not this apparent uniformity of practice resulted in substantial justice to the people and the communities on whose behalf these complaints were filed it is important to bear in mind the fact that the Pennsylvania distances to New York from points in Ohio and Indiana are in most instances the shortest available distances, whereas the routes of the Pennsylvania to and from Michigan points are in all instances circuitous, the shortest routes from those points to New York running north of Lake Erie and through the Niagara frontier. The only part of the Pennsylvania system reaching Michigan is the line of the Grand Rapids & Indiana running north from Richmond, Ind. In other words, although the uniform observance of the Pennsylvania distances gives a superficial appearance of equality of treatment, a careful analysis of the situation, including the information given in the preceding table, shows that circuitous routes were employed in constructing the rates to and from Michigan points, whereas the shortest routes were used in making the rates to and from many points in Ohio and Indiana; and this difference in practice is, after all, the basis of the complaints now before us. The defendants concede in their brief that because of this method of constructing the rates "such sections of central freight association territory as are remote, comparatively, from the Pennsylvania, and whose mileages to New York via the Pennsylvania are therefore comparatively long, take comparatively high rates. There is no question that this fact influences the level of rates at many Michigan points." In other words, the defendants seem frankly to admit that one of the reasons for the "comparatively high rates" to and from the Michigan points is their remoteness from the lines of the Pennsylvania. It is hardly necessary to observe that the proximity of a point to or its remoteness from the lines of the Pennsylvania system can not properly be accepted by the Commission as a criterion to be used in determining the reasonableness or the propriety of the rates to and from that point. Other things being equal, a point located on the main line of the Grand Trunk in Michigan would seem to be entitled to rates as favorable as those accorded to a competing point located on the main line of the Pennsylvania in Ohio.<sup>1</sup>

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<sup>1</sup> The following is taken from the defendants' brief:

"Historically, as we have seen above, the distance from points in central freight association territory to New York City via the Pennsylvania and its connections had an important influence in the rate adjustments that preceded the percentage groups. This situation to a considerable extent remains. In so far as the present percentage groups reflect the influence of distances in their making, the distances which they reflect are those \* \* \* via the Pennsylvania and its north and south connections. The Pennsylvania Railroad and lines still constitute the great channel of commerce around which the percentage system in central freight association territory groups itself. In the absence of some other controlling influence it will be found that mileages from New York City via the Pennsylvania \* \* \* have a strong influence on the percentage basis."

It is true that since the adoption of this method of constructing the rates there have been arbitrary changes in the rate adjustment which resulted in many departures from the mileage basis, one of the most important of these being the general increase of 1883, to which reference has already been made. In spite of these changes, however, the disadvantage to the Michigan cities which resulted from the employment of the Pennsylvania mileages in 1876-1879 still remains. This is shown by the following table, in which are given the rates and the short-line distances from New York to the cities in Michigan on whose behalf these complaints were filed, and to representative basing points in the states of Ohio and Indiana. The percentage basis of each is shown, and for purposes of comparison there are also given the percentages resulting from a strict application of the percentage formula. The rates shown here and elsewhere in this report are those in effect prior to the decision of the Commission in *The Fifteen Per Cent Case*, 45 I. C. C., 303.

From New York, N. Y., to—	Present short-line distance.	Present percentage basis.	Basis under the percentage formula.	Rates on the 5 classes, in cents.					
				1	2	3	4	5	6
Marshall, Mich.....	740	96	85						
Battle Creek, Mich.....	747	96	86	75.5	55.5	50.4	35.3	30.3	25.2
Kalamazoo, Mich.....	776	96	88						
Grand Rapids, Mich.....	768	96	87						
Lansing, Mich.....	702	95	82	74.9	54.9	49.9	35	30.9	25
Jackson, Mich.....	706	92	82	72.5	52.5	48.3	33.9	29	24.2
Baginaw, Mich.....	685	92	80	72.5	52.5	48.3	33.9	29	24.2
Cadillac, Mich.....	775	110	85	86.7	75.1	57.3	40.5	34.7	28.9
Petoskey, Mich.....	843	120	93	94.6	83	63	44.2	37.3	31.6
Traverse City, Mich.....	822	115	92	90.6	78.5	60.4	42.3	35.4	30.3
.....	579	71	72	35.9	48.5	37.3	26.1	22.4	18.7
.....	577	71	72						
.....	635	76	77	59.9	51.9	39.9	28	23.9	20
.....	676	78	80						
.....	648	78	77	61.5	53.3	41	28.7	24.6	20.6
.....	608	78	79						
.....	576	79	80	62.3	54	41.5	29.1	24.9	20.8
.....	591	80	81	63	54.5	41.5	29.4	25.2	21
.....	559	80	80						
.....	593	83	81	55.4	56.7	43.5	30.5	26.1	21.3
.....	727	85	84	67	54.1	44.6	31.3	26.8	22.4
.....	754	85	86						
.....	790	90	89	70.9	61.5	47.3	33.1	28.4	23.7
.....	800	93	90						
.....	843	93	93	72.3	63.5	48.8	34.2	29.3	24.5

Attention is called particularly to the two columns comparing the present percentage basis with the basis resulting from a strict application of the percentage formula. It will be noted that the bases provided for the Michigan cities are considerably higher than they would be if determined by the formula, and that the cities in Ohio and Indiana are accorded rates which correspond rather closely with those so determined. This evidence shows that, as far as distance is concerned, the Michigan cities are laboring under the same relative disadvantage which resulted in 1879 from the selection of the Pennsylvania distances as the foundation of the percentage system.

## COMPLAINANTS' INTEREST IN THE RELATIVE ADJUSTMENT.

Manufacturers and other shippers in Michigan are in active competition with those in Ohio and Indiana. Numerous witnesses called by the complainants not only explained fully the nature of this competition, but expressed the view that the more favorable rates to and from the competing points resulted in undue prejudice to the Michigan shippers. Furniture manufacturers in Michigan sell their products in eastern markets in competition with those in Ohio and Indiana. The same is true to a less extent of the automobile industry. The crops raised in Michigan are shipped to the east under the rates here assailed. Retail dealers in general merchandise in Michigan compete with mail-order houses in Chicago. In the jobbing of groceries the competition seems to be particularly keen. Throughout the southern peninsula there are wholesale distributing houses which compete not only with each other but with similar concerns located in Detroit, Toledo, and Chicago. Kalamazoo, for example, is an important jobbing point, yet wholesale distributors at Chicago have resident salesmen in Kalamazoo, who sell groceries throughout the southern part of the peninsula as far east as Adrian. The Kalamazoo jobbers also have competitors at Grand Rapids on the north, Detroit and Toledo on the east, and South Bend on the south. The severity of the competition in the jobbing of groceries is indicated by the fact that at the hearing a witness testifying on behalf of Grand Rapids jobbers claimed the whole northern part of the lower peninsula as their natural distributing territory, a claim vigorously contested by jobbers located at Cadillac, Petoskey, and Traverse City, who feel that their location in the northern part of the lower peninsula entitles them to an advantage over their Grand Rapids competitors in that territory. The evidence of record would warrant an extended discussion of this subject, but the interest of some of the Michigan concerns in the rate adjustment, and particularly in the relationship of the rates, is so clearly established that it is thought unnecessary to dwell upon it. Equally clear is the complainants' interest in the relationship between the Detroit rates and those of other points in the lower peninsula, a subject which will be discussed at greater length later in this report.

Having completed this rather general survey of the situation, we proceed now to a brief consideration of the evidence submitted on behalf of each of the complaining cities.

## EVIDENCE SUBMITTED ON BEHALF OF GRAND RAPIDS.

Grand Rapids is the metropolis of western Michigan. It is located on the main line of the Pere Marquette and the Grand Rapids & Indiana, the latter being a part of the Pennsylvania system, and it is



reached by branch lines of the New York Central, the Grand Trunk, and the Michigan Central. In addition to these railroads, whose lines radiate out of the city in twelve different directions, it is served by three interurban electric lines, which connect it with Battle Creek, Kalamazoo, Holland, Grand Haven, and Muskegon.

To the advantages afforded by the service of these various carriers are added several others, which account in part for the city's commercial and industrial development. Chief among these is hydro-electric power, which is furnished to manufacturers at low rates, and which is used by the street railway system and the interurban electric lines. Low gas and water rates and good schools are other advantages. It is maintained by the Grand Rapids Association of Commerce, on whose behalf the complaint was filed, that the industrial progress of the city is attributable to those advantages, and that the principal handicap to be overcome is the rate adjustment, which is regarded as unfavorable. The people of Grand Rapids feel that they have progressed in spite of, rather than because of, the rates of freight maintained by the defendants. The agitation for a revision of the rates was started several years ago, and a formal complaint was filed only because other efforts failed to bring relief.

Grand Rapids is particularly noted for its furniture industry. There are 67 manufacturers of furniture and refrigerators in the city, whose products in 1914 were worth \$15,000,000, approximately 6 per cent of the total value of the furniture produced in the United States in that year. The city is also recognized as a furniture market. Twice each year the furniture manufacturers of Grand Rapids and the surrounding country exhibit their wares to buyers who assemble in the city from all parts of the country, and several large buildings have been erected expressly for display purposes. It is said that New York, Jamestown, N. Y., and Chicago are the only other furniture markets rivaling Grand Rapids in importance.

Furniture was first manufactured in Grand Rapids soon after the middle of the last century, when Boston, Mass., was recognized as the center of the furniture industry of the United States. As the center of population moved westward cities in New York and Pennsylvania began to rival Boston, and finally Grand Rapids took its place as one of the leading furniture centers. In the early years of the prominence of Grand Rapids as a manufacturing city the success of the furniture industry was due in large part to the availability of the native woods, particularly maple, which could be obtained in abundance near the city. To-day conditions have greatly changed. The forests in western Michigan have largely disappeared, and the furniture manufacturers are obliged to get their raw ma-

terials from a distance. A large part of the lumber is now obtained in the south and the southwest. Mahogany comes from Africa and Central America, glass and mirrors from New York, hardware from New England, and varnishes from Cleveland, Ohio. Grand Rapids owes its importance as a furniture market to-day principally to the fact that many of its inhabitants are expert in woodworking. Children are taught to acquire skill in the art of furniture making, and thus the ability and initiative of the people have preserved to the city a position of prominence which otherwise would have been lost when the forests disappeared.

Not only do the raw materials come from a distance, but the principal markets for furniture are along the Atlantic seaboard, nearly a thousand miles away. More than half of the total output of the Grand Rapids furniture factories is shipped to points in eastern territory. The fact that so many of the materials used in the manufacture of furniture are obtained in the east, and the fact that the manufacturers must dispose of such a large portion of their product in eastern markets, account in part for the interest displayed by the furniture manufacturers in this proceeding. The Grand Rapids manufacturers contend also that the present rate adjustment is peculiarly prejudicial to their interests because their competitors enjoy more favorable rates. The principal competition encountered in the large markets of the east is that of manufacturers at New York and Jamestown, whose proximity to those markets gives them an advantage. At numerous points in the states of Ohio and Indiana there are furniture manufacturers whose rates to and from eastern points adhere rather closely to those resulting from a strict application of the percentage formula. Our attention is directed particularly to the fact that there are a number of furniture manufacturers in Detroit, a 78 per cent point, and the advantage in freight rates which those manufacturers enjoy over their Grand Rapids competitors is measured by the difference between 78 and 96; and we are reminded that Detroit enjoys this advantage not only on the raw materials received from the east, but on the furniture shipped to eastern markets.

The defendants contend that the furniture produced in Grand Rapids is so valuable that the freight rates are a matter of little concern to the manufacturers, and it must be said that the evidence of record largely supports this contention. All of the larger furniture manufacturers regard the whole country as their proper market, and they actually sell their products, not only in all parts of the United States, but to a certain extent in foreign countries. The freight rates, though sometimes constituting an item of cost to the producer, have not been of sufficient importance to restrict the territory

in which any of the larger manufacturers dispose of their products. In spite of the fact that furniture is manufactured in the east the Michigan manufacturers are able to market at least half of their product in eastern territory, and the eastern producers are similarly able to sell their furniture in the middle west. One large concern engaged in the manufacture of tables at St. Johns, Mich., a 96 per cent point, moved its plant in 1905 to Cadillac, a 110 per cent point, to be nearer the timber supply, apparently regarding the difference in freight rates as a comparatively unimportant factor.

Several reasons are given for the ability of the manufacturers to overcome differences in freight rates. In the first place the rates, as previously suggested, are low when compared with the value of the furniture shipments to which they are applied. Furniture is rated first class in less than carloads and second class in carloads. Approximately 50 per cent of the total shipments of furniture from Grand Rapids to eastern territory moves in carload lots, the percentage being so large because the Grand Rapids Furniture Manufacturers Association has established a car-loading department which consolidates less-than-carload lots and ships them to the principal cities of the east in solid carloads. The first and second class rates from Grand Rapids to New York are 75.6 cents and 65.6 cents, respectively. If a bureau weighs 200 pounds the freight charges will be \$1.51 if it is part of a less-than-carload shipment, and \$1.31 if the carload rate is applied. The defendants call our attention to the fact that a reduction from 96 per cent to 88 per cent in the Grand Rapids rates would amount to only a few cents on such a bureau; and when it is remembered that a buyer of furniture is often particularly interested in its quality and style it may readily be understood that a difference of only a few cents in the freight charges is not of serious consequence to the producers. One witness who referred to the competition of certain manufacturers in Ohio and Indiana was unable to give their names or to tell the rates of freight paid by them; and another, the secretary and general manager of one of the Grand Rapids concerns, after referring to the competition of the Detroit manufacturers, naively remarked that it was only a few days before the hearing that he discovered that the freight rates between Detroit and the eastern territory were lower than those from Grand Rapids. The complainants contend that it is unfair to gauge the disadvantage of the Grand Rapids producers by stating it in cents per piece of furniture; that when that difference is applied to the total quantity of furniture shipped from Grand Rapids in a year the result is by no means inconsequential; and that it is no defense to an unlawful adjustment of

freight rates to say that the consequent injury to the parties on whose behalf complaints are filed is not serious.<sup>1</sup>

The relatively small importance of the rates of freight to the furniture manufacturers is partially explained by the fact that the freight charges are usually paid by the retail dealers, the furniture being sold f. o. b. Grand Rapids. Furthermore, the evidence indicates that the retail dealers, in fixing the price of furniture in the eastern cities, not only add from 60 to 100 per cent to the Grand Rapids price to cover their expenses and profits, but they add the freight charges, increased by a like percentage. In other words, the retail dealers endeavor to make a profit not only on the furniture but on the freight charges.

#### THE INTERVENTION OF MUSKEGON.

One of the witnesses for the Grand Rapids Association of Commerce suggested at the hearing that it would be logical to create a new rate group out of the eastern part of the 96 per cent group. The proposed group, to which would be assigned a percentage basis of 88, would be bounded on the west by the line of the New York Central extending through White Pigeon and Kalamazoo to Grand Rapids and on the north by the line of the Grand Trunk from Grand Rapids to Owosso. This suggestion met with opposition not only from the carriers but from Muskegon, located approximately 40 miles west of Grand Rapids. Muskegon and Grand Rapids have taken the same rates on westbound traffic since 1880 and on eastbound traffic since 1887. In view of the fact that the two cities compete with each other it would be inadvisable to disturb the relationship which has been maintained for such a long period.

#### EVIDENCE ON BEHALF OF MARSHALL, BATTLE CREEK, AND KALAMAZOO.

The chambers of commerce of Marshall, Battle Creek, and Kalamazoo are corporations organized for the purpose of promoting the commercial, industrial, and civic interests of the communities which they represent. In their joint complaint they allege that the class rates between Marshall, Battle Creek, and Kalamazoo and points in eastern territory are unjust and unreasonable, "both absolutely and relatively," and also unjustly discriminatory and unduly prejudicial to the complaining cities in favor of other points.

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<sup>1</sup> The earnings which the defendants derive from the transportation of furniture can not be regarded as excessive. In January, 1917, the Grand Rapids & Indiana handled 98 cars of furniture billed from Grand Rapids to eastern points. The average loading per car was 12,006 pounds, the average revenue per car \$79.80, and the average revenue per car-mile 9.6 cents.

Like Grand Rapids, the complaining cities are located in the 96 per cent rate group. They are all on the main line of the Michigan Central Railroad between Buffalo and Chicago. Battle Creek is also on the main line of the Grand Trunk, while Kalamazoo is reached by a branch line of the Grand Trunk and by north and south lines of the Grand Rapids & Indiana and the New York Central.

The following table shows how the rates from New York to the three cities compare with the rates to points in Ohio and Indiana for somewhat similar distances:

From New York to—	Miles.	Per- cent- age basis.	Classes.					
			1	2	3	4	5	6
Marshall, Mich.....	740	96	75.6	65.6	50.4	35.3	30.2	25.2
Battle Creek, Mich.....	747	96						
Kalamazoo, Mich.....	776	96						
Celina, Ohio.....	730	85	67	58.1	44.6	31.3	26.8	22.4
Union City, Ind.....	733	86	67.8	58.7	45.2	31.6	27.1	22.6
Bluffton, Ind.....	790	90	70.9	61.5	47.3	33.1	28.4	23.7
Alexandria, Ind.....	791	92	72.5	62.8	48.3	33.9	29	24.2
Indianapolis, Ind.....	800	93	73.3	63.5	48.8	34.2	29.3	24.5
Tipton, Ind.....	843	93	73.3	63.5	48.8	34.2	29.3	24.5

These comparisons show that the rates from the east to the complaining cities have been constructed on a higher basis than those to the other points in the table.

The complaining cities contend that they were "arbitrarily" placed in the 96 per cent rate group and that they were thereby and still are deprived of the benefit of their geographical location; and that if the rates were based strictly upon the percentage formula, applied to the distances via the shortest workable routes, the percentages assigned to the individual cities would be as follows: Marshall, 85 per cent; Battle Creek, 86 per cent; and Kalamazoo, 88 per cent. These complainants are willing, however, to have all of the complaining cities continued in the same rate group.

The evidence submitted by the complaining cities with reference to the issue of undue prejudice consists chiefly of testimony to the effect that jobbers and manufacturers there located buy their raw materials in the eastern territory and ship their products to points in central freight association territory where the rates from the east are said to adhere closely to the percentage formula, and that the rate adjustment, therefore, prejudices them in the distribution of their wares and gives an undue preference to their competitors located in the territory immediately to the south of them.

An exhibit was introduced by complainants showing that the combination of rates from eastern trunk line territory to Detroit and Toledo and the rates from the latter gateways to points in central freight association territory and western trunk line territory such as Fort



Wayne, South Bend, Indianapolis, Chicago, Milwaukee, Mississippi River crossings, and St. Paul are lower than the combination of in and out rates to such points based on the complaining cities. The purpose of this exhibit, as stated by the witness who introduced it, was to show the disadvantage under which the jobbers and manufacturers at the complaining cities labor in competition with those at Detroit and Toledo. The witness had no personal knowledge of any outbound traffic from the complaining cities to the points mentioned, save paper; and another witness, the traffic manager of one of the largest industrial concerns in Battle Creek, testified that he did not believe the establishment of rates on the basis sought, 88 per cent, would have any effect in stimulating traffic from the complaining cities to the points shown in the exhibit because the jobbers in southern Michigan operate in a territory that does not include those points.

It was shown that there are manufacturers of paper and paper board at Kalamazoo and at other points in that vicinity who are handicapped by the present adjustment in endeavoring to compete with manufacturers of the same commodities at Monroe, Mich., a point in the 78 per cent group. All of these manufacturers are also in keen competition with manufacturers of like commodities in New England, New York, Pennsylvania, and West Virginia. The Michigan manufacturers receive a large part of their raw material from points in the east and ship their manufactured products to eastern markets where they are sold on a delivered basis. In *Official Classification Rates on Paper*, 38 I. C. C., 120, we permitted the general establishment of sixth-class rates both eastbound and westbound within official classification territory on printing paper, wrapping paper, cardboard, tag board, and other commodities of a similar nature, and the class rates are of particular interest to all of the paper manufacturers at the present time because of the uniform application of the class basis to shipments of these commodities.

The manufacturers of cereal foods at Battle Creek ship large quantities of their products to points throughout the eastern territory, and the same is true of various other industries located at that point. Evidence was also offered on behalf of two Kalamazoo industries, doing a less-than-carload business, showing that one of them makes shipments to every jobbing center east of Buffalo and that another, a stove manufacturing concern, makes less-than-carload shipments of stoves to practically every point in the east. Kalamazoo is also an important grocery jobbing point, and the competition of its jobbers with others at Chicago, Grand Rapids, South Bend, Detroit, and Toledo has already been discussed.

In industrial and commercial progress these three cities have kept pace with other Michigan cities, but their success is ascribed rather



to the energy of their business men than to the rates of freight which they are obliged to pay. Marshall has not prospered to the same extent as Battle Creek and Kalamazoo. In 1870 its population was 5,200. In 1873 the Michigan Central railroad shops which were located there were removed to Jackson and in 1880 the population had decreased to 4,300. It is now approximately 4,500. The growth in the population of Battle Creek and Kalamazoo is indicated in the following table:

Population in year—	Battle Creek.	Kalamazoo.
1880.....	7,838	11,937
1890.....	13,197	17,853
1900.....	18,563	24,404
1910.....	25,267	39,437
Present (estimated).....	31,800	45,000

#### EVIDENCE INTRODUCED ON BEHALF OF LANSING.

Lansing, the capital of Michigan, is located near the center of the lower peninsula. It is served by four trunk lines, the Grand Trunk, the New York Central, the Michigan Central, and the Pere Marquette, and also by interurban electric lines.

Like most other cities of the state of Michigan, Lansing has enjoyed a remarkable growth during the last few years. Its present population is 54,000, a gain of nearly 75 per cent since the federal census of 1910. In 1899 the value of the products manufactured in Lansing was \$2,942,000, while in 1914 it was \$26,984,000, an increase of 817 per cent in 15 years. The development of the automobile industry has been in large measure responsible for the city's growth. One automobile company located in Lansing manufactured and sold \$3,240,000 worth of automobiles in 1907, while in 1916 the sales of the same company amounted to \$9,847,400. It is contended that the rates to and from Lansing, which is in the 95 per cent group, should not exceed 82 per cent of the Chicago-New York scale. The following table, taken from one of the exhibits filed on behalf of this complainant, shows how the rates from New York to Lansing compare with those from New York to points in Ohio and Indiana:

From New York, N. Y., to—	Short-line distance.	Percent-age basis.	Classes.					
			1	2	3	4	5	6
Lansing, Mich.....	702	95	74.9	64.9	49.9	35.0	20.9	25.0
Springfield, Ohio.....	693	83	65.4	56.7	43.6	30.5	26.1	21.8
Cincinnati, Ohio.....	739	87	68.6	59.4	45.7	32.0	27.4	22.9
Richmond, Ind.....	732	88	69.3	60.1	46.2	32.4	27.7	23.1
Muncie, Ind.....	774	90	70.9	61.5	47.3	33.1	28.4	23.7
Indianapolis, Ind.....	800	93	73.3	63.5	48.8	34.2	29.3	24.5

It will be observed that the rates from New York to Indianapolis are lower than those to Lansing, although the distance is 98 miles greater. This table clearly shows that the rates to Lansing have been constructed on a higher basis, mileage considered, than the rates to points in the states of Ohio and Indiana.

The strict application of the percentage formula would give Lansing the 82 per cent basis which it seeks. If the rates to and from Lansing were made uniformly 82 per cent of the Chicago-New York scale, and the rates to the points in Ohio and Indiana shown in the preceding table remained unchanged, the comparison would be as follows:

From New York, N. Y., to—	Short-line distance.	Percent-age basis.	Classes.					
			1	2	3	4	5	6
Lansing, Mich.....	702	82	64.6	56	43.1	30.2	25.8	21.6
Springfield, Ohio.....	693	83	65.4	56.7	43.6	30.5	26.1	21.8
Cincinnati, Ohio.....	739	87	68.6	59.4	45.7	32	27.4	22.9
Richmond, Ind.....	782	88	69.3	60.1	46.2	32.4	27.7	23.1
Muncie, Ind.....	774	90	70.9	61.5	47.3	33.1	28.4	23.7
Indianapolis, Ind.....	800	98	73.3	63.5	48.8	34.2	29.3	24.5

If the rates between New York and Lansing were constructed on an 82 per cent basis they would be somewhat lower than those approved by the Commission in *C. F. A. Class Scale Case*, 45 I. C. C., 254. In the tariffs under consideration in that proceeding Lansing was embraced in a group known as zone B, the rates to and from which are somewhat higher than those proposed for the territory to the south. The following table compares the present rates from New York to Lansing and those which would apply under the 82 per cent basis with the zone B rates approved by the Commission in the case cited:

	Miles.	Classes.					
		1	2	3	4	5	6
New York to Lansing, present rates.....	702	74.9	64.9	49.9	35	29.9	25
New York to Lansing, 82 per cent.....	702	64.6	56	43.1	30.2	25.8	21.6
New C. F. A. scale, zone B <sup>1</sup> .....	700	67	56.9	44.9	33.5	23.5	18.8

<sup>1</sup> The greatest distance shown in the Commission's scale is 600 miles. The rates here shown are obtained by extending that scale to 700 miles.

It is interesting to compare Lansing's rates with those of Conneaut, Ohio, and Chicago. Conneaut is 190 miles east of Lansing and Chicago is 194 miles west, as measured by the short-line distance to each point. If the rates were constructed on a distance basis, therefore, the rate spread between Conneaut and Lansing would be approximately the same as that between Lansing and Chicago, but the actual situation is quite different.

From New York, N. Y., to—	Miles.	Percent- age basis.	Class rates in cents per 100 pounds.					
			1	2	3	4	5	6
Chicago.....	896	100	78.8	68.3	52.5	36.8	31.5	26.3
Lansing.....	702	95	74.9	64.9	49.9	35	29.9	25
Difference.....	194	5	3.9	3.4	2.6	1.8	1.6	1.3
Lansing.....	702	95	74.9	64.9	49.9	35	29.9	25
Conneaut.....	512	67	52.8	45.8	35.2	24.7	21.1	17.6
Difference.....	190	28	22.1	19.1	14.7	10.3	8.8	7.4

Lansing is naturally prompted to inquire why the spreads should differ so widely when the differences in distance are approximately the same.

#### EVIDENCE INTRODUCED ON BEHALF OF JACKSON.

Jackson, which is located in the south central part of the lower peninsula, is on the main line of the Michigan Central. It is the northern terminus of the Cincinnati Northern Railroad, and is served also by two branch lines of the New York Central, one extending from Toledo to Jackson and another from Fort Wayne to Jackson. It is also served by a line of the Michigan Central extending in a northwesterly direction from Jackson to Grand Rapids, and by a branch line of the Grand Trunk from Port Huron. Jackson's population is approximately 40,000, an increase of 15,000 since 1900. Its principal industries are the manufacture of automobiles, automobile accessories, and underwear. Based on a distance of 708 miles to New York, Jackson would be entitled under the percentage formula to 82 per cent. In this proceeding it asks for 84 per cent.

An examination of the eastbound map shows that the Cincinnati Northern constitutes in a general way the western boundary of the 85 per cent group, which extends almost as far north as Jackson. There are no large cities or towns between the northern boundary of the 85 per cent group and Jackson, and this complainant is warranted in inquiring why the 85 per cent group was not extended northward so as to include Jackson. Their study of the history of the rate adjustment with which we are here dealing has convinced the defendants that north-and-south lines came to be adopted in so many instances as the western boundaries of the rate groups because those lines desired to handle traffic both northbound and southbound without departing from the long-and-short-haul rule. If this principle had been applied in constructing the 85 per cent group Jackson would have been embraced in it. The record does not explain the reasons for the adoption of the present northern boundary of the 85 per cent group.

The record shows in some detail the nature of the industries in Jackson, but it is deemed unnecessary to outline that evidence in this report. It suffices to say that manufacturers of automobiles, a flour mill, and at least one wholesale grocery house are in active competition with like industries at Detroit. It is further shown that Jackson, like most of the other Michigan cities, has progressed in recent years.

EVIDENCE ON BEHALF OF CADILLAC, PETOSKEY, AND TRAVERSE CITY.

Except that the rates to and from Mackinaw City, in the 120 per cent group, were determined by taking the actual distance of 226 miles from that point to Grand Rapids and adding it to the Grand Rapids distance, there is no evidence to indicate that the rate groups in the northern part of the lower peninsula were based upon mileage. On the contrary, it affirmatively appears that the groups north of the 100 per cent group, except that taking 120 per cent, were arbitrarily created in 1891. The line of the Pere Marquette east of Manistee and Ludington marks in a general way the northern boundary of the 100 per cent group, because that carrier, which operates car ferries from Ludington to Milwaukee and Manitowoc, is unwilling to charge higher rates to and from intermediate points on its line in Michigan than it contemporaneously maintains to and from the west bank points.

Cadillac, located near the center of the 110 per cent group, is served by the Ann Arbor and the Grand Rapids & Indiana. Its population is 11,000, an increase of 83 per cent since 1900. The products principally manufactured are lumber, flooring, furniture, pig iron, and automobile trucks. The city is surrounded by a fertile agricultural region. In the early days Cadillac was preeminently a lumber-producing town, and native woods are still used in part by its manufacturers, but the gradual disappearance of the forests is leading to a diversification of industry.

Manufacturers at Cadillac are in active competition with those in Grand Rapids and other points in the lower peninsula. A large manufacturer of tables at Cadillac sells his product in eastern markets in competition with others at Grand Rapids, Detroit, and points in Ohio, Indiana, and other states. Its principal competitor is located at Celina, Ohio, one of the points shown in the table on page 428, *supra*, and said to be unduly preferred because its rates are even lower than those arrived at by the use of the percentage formula. Manufacturers of flooring at Cadillac, who ship more than 30 per cent of their product to points in the east, have competitors at Saginaw, Bay City, Detroit, Grand Rapids, and other Michigan points. A company manufacturing automobile trucks, whose business has rapidly increased recently, sells 60 per cent of

its products in the east, where it competes with other producers located in Milwaukee, Wis., and other points. A wholesale grocery company at Cadillac, which distributes its products in the surrounding country, must meet the competition of other jobbers located at Saginaw, Detroit, Grand Rapids, and other points.

The commodity rates on lumber and articles taking the lumber rates from Cadillac to eastern points are now constructed on a 100 per cent basis, and the complaint of the Cadillac Chamber of Commerce alleges that these commodity rates should be reduced to a 90 per cent basis. Little evidence was specifically addressed to this allegation, and the Commission would not be warranted in requiring any change in these rates on the present record. Objection is also made on behalf of Cadillac to the fact that its rates exceed those to and from more distant points on the west bank of Lake Michigan. Consideration will be given later in this report to the applications filed by the defendants in which they seek authority to continue the present adjustment.

At Petoskey, a summer resort located on the Pere Marquette and the Grand Rapids & Indiana in the northern part of the lower peninsula, there are several industries whose representatives appeared at the hearing and complained of the present rate adjustment. One of these manufactures rotary pumps, obtaining part of its raw material in eastern territory and selling most of its finished product there in competition with similar concerns located at Battle Creek, Mich., Beloit, Wis., and at points in the state of New York. Another manufactures sectional maple blocks for use by butchers and manufacturers. Lower freight rates from Chicago and Menominee, where competitors are located, have handicapped this concern in disposing of its products in eastern markets. A wholesale grocery house at Petoskey competes with others at Grand Rapids, Cadillac, Detroit, Chicago, and other points. Like other wholesale jobbers of groceries in this territory this company receives a large part of its supplies, notably sugar and canned goods, from eastern markets. Jobbers at Detroit can ship groceries from New York to that point and distribute them at points near Petoskey on lower combination rates than any available to the Petoskey concern. The combination rates to Mackinaw City are illustrative of the general situation:

From—	Class rates in cents per 100 pounds.					
	1	2	3	4	5	6
New York to Petoskey.....	94.6	82	63	44.2	37.8	31.6
Petoskey to Mackinaw City.....	18.9	15.8	11.6	9.5	7.9	6.3
Combination on Petoskey.....	113.5	97.8	74.6	53.7	45.7	37.9
New York to Detroit.....	61.5	53.3	41	28.7	24.6	20.5
Detroit to Mackinaw City.....	49.4	43.1	32.6	24.2	18.4	14.2
Combination on Detroit.....	110.9	96.4	73.6	52.9	43	34.7

Traverse City, which is in the 115 per cent group, is served by the Grand Rapids & Indiana, Pere Marquette, Manistee & Northeastern, and the Traverse City, Leelanau & Manistique. Its population in 1910 was 12,215. The principal industries are the manufacture of chairs, fruit packages, wagons, engines, refrigerators, shoes, and tables. The surrounding country has developed rapidly since 1909, agricultural conditions being particularly favorable.

In spite of the gradual disappearance of the forests in the northern part of the peninsula, and the consequent loss of that tonnage to the carriers, the loss has been offset in a measure by the general development of the region in manufacturing and in agriculture.

Statistics introduced in evidence show that the development of the twenty counties in the northwestern part of the lower peninsula has been relatively as great as the progress of the state as a whole. Between 1880 and 1910 the population of these counties increased 79.95 per cent, while the percentage of increase for the whole state was but 71.57. The rapid agricultural development of the northern part of the peninsula is indicated by the fact that between 1900 and 1910 the value of farm property in the twenty counties increased from \$81,840,000 to \$162,082,000, a gain of nearly 100 per cent in the decade. Other statistics show a marked increase in the production of grain, vegetables, and fruits, and that this part of the peninsula is much more developed than it was in 1891 when these rate groups were first established. Commendable efforts are being made by the people of this region to insure a still greater development, and they feel that a more favorable rate adjustment would aid them in that endeavor.

#### EVIDENCE INTRODUCED ON BEHALF OF SAGINAW.

Although no formal complaint is now before us on its behalf, Saginaw is one of the points covered by the general complaint of the Michigan Manufacturers' Association, and evidence was introduced to support the contention that it is entitled to more favorable rates.

Saginaw, the third largest city in the state, is located on the Saginaw River, which is navigable for most of the boats plying on the great lakes. The city is served by three railroads, the Michigan Central, the Grand Trunk, and the Pere Marquette, but it is located on only one of the through east-and-west routes, that of the Pere Marquette from Ludington to Port Huron. Its growth has been less rapid than that of some of the other Michigan cities, and there was an actual decline between 1890 and 1900, a fact attributable in large measure to the disappearance of native woods and the decline of the lumber industry, which have necessitated a diversification of industry and a readjustment of commercial conditions; and although the record indicates that during the last few years the situation has



changed for the better, Saginaw's progress at the present time is less remarkable than that of the other Michigan cities.

Saginaw's contention that its present rate basis of 92 per cent subjects it to undue prejudice was the principal issue presented in *Saginaw Board of Trade v. Grand Trunk Ry. Co.*, 17 I. C. C., 128. In our decision in that case we observed that the Saginaw Valley "lies well to the north of the through lines between Chicago and New York and is more or less remote from the direct current of the great volume of interstate movements between the east and the west," and that the proximity of Detroit and Toledo "to the great channels of through transportation" entitled them to relatively favorable rates. The complaint was accordingly dismissed.

#### THE RATES FROM DETROIT AND TOLEDO.

Throughout this proceeding the complainants have expressed their dissatisfaction with the relationship which the Detroit and Toledo rates bear to the rates of the complaining cities. The map shows that Detroit and Toledo are in the 78 per cent group. Attention is called particularly to the comparatively rapid increase in the percentages assigned to the groups west of Detroit. A short distance west of Detroit is the 84 per cent group—an increase of 6 points—and just west of that group is the 92 per cent group. Still farther to the west is the 95 per cent group—a total increase of 17 points for the three groups. West and southwest of Toledo the increase is much more gradual. Following the line of the Toledo, St. Louis & Western, for example, on the preceding map, we find that after leaving the 78 per cent group it traverses the 83 per cent group, then the 85 per cent group, then the 87 per cent group, an increase of only 9 points for the three groups. Why, ask the complainants, should not the groups west of Detroit be graded in the same general way? If the groups in northwestern Ohio are graded 78, 83, 85, 87, why should corresponding groups in adjacent territory in southeastern Michigan be graded 78, 84, 92, 95? With respect to the westbound adjustment the increase west of Detroit is still more marked. On the line of the Michigan Central the 78 per cent group extends only to Detroit Stock Yards, 4 miles west of Detroit, and 6 miles farther west the 92 per cent group is reached.

The principal witnesses for the defendants, asked repeatedly to explain this situation, answered that they had not investigated it and that they could not explain it. The testimony of one witness to the effect that water competition at both Detroit and Toledo has had its effect on the rates does not explain why there is a sudden increase just west of Detroit and a gradual increase southwest of Toledo; nor can we accept the explanation that the heavier volume of traffic

at Detroit and Toledo is responsible for their relatively favorable rates, for that factor, though perhaps not without influence on the general rate structure, has played no part in the determination of the percentages assigned to groups similarly located; and the evidence of record does not show that the tonnage originating in the territory west of Detroit is less than that originating southwest of Toledo. Because of the active competition between shippers in Detroit and those in other parts of the lower peninsula, the sudden increase in the percentages west of Detroit is of great interest and importance, yet the record leaves it practically unexplained.

Whether Detroit and Toledo are entitled to rates constructed on a lower mileage basis than the rates to and from the complaining cities can be properly answered only by considering carefully the history of the rates and particularly the effect of water competition upon the rate structure as a whole. Long before there were through all-rail routes between New York and Chicago traffic moved in volume between those points over the water routes afforded by the great lakes, the Erie Canal, and the Hudson River. The rates later established by the rail lines were doubtless determined in part by the rates maintained by the water carriers. In this respect the class rates between Chicago and New York may properly be regarded as having been influenced by water competition; and the rates to and from other points in central freight association territory, constructed upon percentages of the Chicago-New York scale, necessarily reflect the same influence. It is important to observe, however, that in determining the percentages of the various groups practically no consideration was given to water competition.

For the purpose of showing that the rates to and from Detroit and Toledo were influenced by water competition the defendants have described their history at some length upon the present record. In 1876 Detroit was an 85 per cent point with respect to eastbound traffic, and Toledo was 78. In 1879 both points were made 81.5. In 1880 both were made 75.5, and in 1883 they were increased to 78 "to prevent threatened reductions at other points." As early as 1879 Detroit's mileage was figured through Canada and the Niagara frontier, an advantage not accorded to other important Michigan points at that time or since.

The minutes of the meeting of the joint executive committee of the trunk lines in 1880, relied upon to sustain the contention that the reduction of 1880 was due to water competition, do not do so. They merely show that it was decided, by a vote of 7 to 4, to reduce Detroit and Toledo to 75.5, without assigning reasons for the reduction. The minority report stated, in effect, that the real cause of the reduction was "local pressure" exerted on behalf of shipping inter-

ests at Detroit and Toledo, and held that inasmuch as the influence of water competition was already recognized in the Chicago-New York scale, Detroit and Toledo should be content with their proper percentage of that scale. If water competition was so strong as to cause the reduction to 75.5 per cent in 1880, it was not sufficiently strong to prevent an increase to 78 per cent three years later.

Turning for the moment from the rate history, which does not definitely decide the point in issue, we find that at the present time Toledo enjoys a basis of rates which is practically the same, mileage considered, as that resulting from a strict application of the percentage formula. The shortest workable route from New York to Toledo is 666 miles. Applied to this distance, the formula gives a percentage of 79. The short-line workable distance from New York to Detroit is 627 miles, for which the formula gives 77. We have already observed that the percentages assigned to interior points in Ohio and Indiana also correspond closely with those resulting from the formula. The following table makes it clear that the Detroit and Toledo rates can not properly be regarded as depressed rates:

From New York, N. Y., to—	Miles.	Present per-centage.	Per-centage under the formula.
Detroit, Mich.....	627	78	77
Toledo, Ohio.....	666	78	79
Crestline, Ohio.....	635	76	77
Fostoria, Ohio.....	676	78	80
Marion, Ohio.....	648	78	77
Forest, Ohio.....	676	79	80

The only conclusion that can fairly be drawn from the evidence on this point is that water competition has played a very small part, if it has played any part at all, in fixing the relationship between the rates to and from the various groups in central freight association territory. In the light of this evidence, it is impossible to conclude that the relative advantage in rates which Detroit and Toledo enjoy over the complaining cities can be explained by the absence of water competition at the latter points.

COMPARISON OF TRANSPORTATION CONDITIONS.

The defendants contend that the transportation conditions in the state of Michigan are decidedly less favorable than those in Ohio, Indiana, and Illinois, and that the difference is so marked as to warrant the maintenance of higher rates from and to the Michigan points. The testimony of the defendants' witnesses on this subject was addressed to three separate contentions: (1) That

the statistics show a greater density of tonnage for the carriers serving Ohio, Indiana, and Illinois than for the Michigan lines; (2) that the traffic originating in Michigan differs in character from that produced in the other three states; and (3) that the Michigan lines do not participate in through traffic to the same extent as do the carriers to the south of them. The evidence addressed to each of these contentions will be briefly considered.

That the freight traffic density of the larger Michigan lines is materially less than that of some of the lines in Ohio, Indiana, and Illinois, is shown by the following comparison:

*Statement showing number of miles operated and number of tons of freight carried 1 mile per mile of road during the fiscal year 1916 for the carriers named.*

## TYPICAL MICHIGAN LINES.

Name of carrier.	Mileage operated.	Traffic density.
Ann Arbor.....	295. 91	1, 171, 023
Pere Marquette.....	2, 251. 47	1, 041, 595
Grand Trunk <sup>1</sup> .....	974. 16	1, 520, 817
Michigan Central.....	1, 803. 26	2, 048, 781
Average density.....	.....	1, 445, 554

## OTHER CENTRAL FREIGHT ASSOCIATION LINES.

Baltimore & Ohio.....	4, 539. 38	3, 479, 318
Cleveland, Cincinnati, Chicago & St. Louis.....	2, 382. 96	2, 346, 499
Detroit, Toledo & Ironton.....	441. 29	760, 172
Erie <sup>2</sup> .....	876. 00	4, 979, 358
New York, Chicago & St. Louis.....	570. 10	4, 292, 896
Pittsburgh, Cincinnati, Chicago & St. Louis.....	1, 488. 98	3, 620, 591
Wheeling & Lake Erie.....	512. 13	2, 543, 545
Pennsylvania Company.....	1, 758. 08	4, 972, 225
Wabash.....	2, 519. 06	1, 581, 020
Toledo & Ohio Central.....	435. 69	2, 568, 523
Hocking Valley.....	350. 65	4, 210, 932
Average density.....	.....	3, 214, 097

<sup>1</sup> Lines west of Detroit and St. Clair rivers.

<sup>2</sup> Lines west of Salamanca. Figures taken from report to stockholders.

In the same connection it is shown that the average number of loaded cars per revenue train-mile on the principal Michigan lines in 1916 was 34.16, while the average of typical roads in Ohio and Indiana was 43.18.

It is the contention of the defendants, supported in large part by the evidence of record, that the lighter traffic density of the Michigan lines is attributable to the fact that the tonnage offered the carriers in that state is essentially different in character from that originating in the states of Ohio, Indiana, and Illinois, particular stress being laid on the fact that the latter states are rich in minerals, the products of the mines affording a heavy and profitable tonnage to the carriers.

A comparison of the production of coal in the several states in 1914 is of interest:

*Production of coal in the states named for the year 1914, from reports of United States Geological Survey.<sup>1</sup>*

	Tons.
Ohio.....	18, 843, 115
Indiana.....	16, 641, 132
Illinois.....	57, 589, 197
Michigan.....	1, 283, 030

Clay and its products also constitute an important tonnage for the lines in this territory. In the value of clay products in 1914 Ohio led all other states of the union with \$36,839,621. Pennsylvania was second with \$22,726,031; Illinois fourth with \$14,791,938; Indiana sixth with \$7,090,630; and Michigan eleventh with \$2,770,057. The production of common bricks and vitrified bricks in these states in 1915 was as follows:

	Common brick.	Vitrified brick.
Ohio.....	436, 117, 000	293, 381, 000
Indiana.....	180, 701, 000	42, 937, 000
Illinois.....	941, 341, 000	157, 176, 000
Michigan.....	269, 154, 000	7, 773, 000

The carriers encourage the establishment of pig-iron furnaces along their lines, not only because pig iron itself constitutes an important tonnage, but because other commodities such as iron ore, coke, and limestone are used in manufacturing it. Eighty per cent of the total pig-iron production of the United States is produced in Pennsylvania, Ohio, Illinois, Indiana, and Michigan. In 1915 the number of tons of that commodity shipped from each of these states, except Indiana, was as follows: Pennsylvania, 12,779,000; Ohio, 6,995,000; Illinois, 2,455,000; Michigan, 486,000. There are only four pig-iron furnaces in the lower peninsula of Michigan.

Of the heavier commodities the most important produced in Michigan is lumber, but even that commodity is offered in much smaller quantities, both absolutely and relatively, than in former years. In 1880 Michigan produced 4,000,000,000 feet of lumber, which then constituted 22 per cent of the country's total production. In 1913 the production in Michigan had dropped to 1,200,000,000 feet, or 3.1 per cent of the country's total production. The Ann Arbor Railroad, constructed primarily for the purpose of tapping the Michigan

<sup>1</sup> These figures do not include the tonnage produced in the mines of western Pennsylvania, some of which are located in central freight association territory, nor do they include the coal produced in West Virginia, which furnishes an important tonnage for the carriers in this territory. The coal production of Pennsylvania and West Virginia in 1914 was 220,000,000 tons.

forests, finds that lumber now constitutes a comparatively unimportant part of its total tonnage; and while the Michigan lumber production has been declining there has been a steady increase in the production of minerals in the states to the south. In 1890 there were produced in Ohio, Illinois, Indiana, and Pennsylvania 64,000,000 tons of coal. The production was 150,000,000 tons in 1900, 222,000,000 tons in 1910, and 230,000,000 tons in 1914.

Michigan is an important agricultural state, and the products of its farms constitute a large item in the tonnage of the Michigan lines, yet statistics show that even in this respect Michigan can claim no advantage over Ohio, Indiana, or Illinois. The following table shows, in fact, that in 1910 the latter states surpassed Michigan both in farm acreage and in the value of farm products:

	Farm acreage.	Percentage of farm acreage to total area.	Value of farm products.
Ohio.....	24,000,000	92.5	\$230,000,000
Indiana.....	21,000,000	92.3	204,000,000
Illinois.....	32,000,000	90.7	372,000,000
Michigan.....	19,000,000	51.5	162,000,000

The carriers contend that from a transportation viewpoint the northern part of the lower peninsula is "the least attractive locality in central freight association territory." Tonnage is offered in much smaller volume there than in the southern part of the peninsula. During two typical months of 1916 the eastbound carload traffic offered to the Pere Marquette at its stations in the 110, 112, 115, and 120 per cent groups constituted only 3.3 per cent of the total eastbound carload freight received by that carrier at its stations in Michigan, although it has in those four groups 190 miles of track, or 10.5 per cent of its total mileage in the state of Michigan.

Our attention is further called to the fact that Michigan's location places her at a relative disadvantage with respect to the through movement of all-rail freight. The states of Ohio, Indiana, and Illinois are traversed by several of the country's important trunk lines, and a great volume of through all-rail tonnage is handled by them. With the exception of the freight carried by the all-rail routes of the Grand Trunk and the Michigan Central, whose main lines traverse only the southern part of the lower peninsula, Michigan's through traffic consists almost wholly of the tonnage carried across lake by the car ferries; but these are of limited capacity, and they carry a much smaller volume of freight than that moving all rail through such gateways as Chicago and East St. Louis. Commodities requiring an expedited movement, such as fruit, dairy products, and live stock, can not be handled successfully by the car



ferries. Their eastbound tonnage consists principally of grain and lumber, and of the westbound traffic 75 per cent is coal. The Ann Arbor's eastbound traffic moves in so much greater volume than westbound traffic that it is necessary to carry many empty cars westbound. In 1916 the Ann Arbor's car ferries carried 19,800 westbound cars, of which 7,800 were empty. Moreover, the car ferries must contend with most difficult operating conditions at times in the winter season. During the last winter, which was the most severe experienced in Michigan in many years, the conditions were very unfavorable, and at the time of the hearing several of the Ann Arbor's car floats were imprisoned in the ice, where they had been for several days. The unfavorable weather conditions also affect the land operations of the carriers in the northern part of the lower peninsula, and the local tonnage offered at points north of Alma is so light that the Ann Arbor contends its operations in that part of the state would be conducted at a loss if it were not able, by means of its car ferries, to share in the through traffic. Only three local freight trains a week are run over the line of this carrier extending from Cadillac to Frankfort. The fact that so many of the important trunk lines have their own rails from the east to Chicago makes it difficult for the car-ferry routes to obtain a substantial part of the traffic moving to and from eastern territory, and we are reminded that the vessels plying on the great lakes handle in large volume the heavy commodities upon which the car ferries must principally rely for their tonnage.

A statement introduced in evidence by the defendants shows the eastbound tonnage handled by rail from and through Chicago and Chicago junctions, East St. Louis, Ill.; across lake from Manistique and Menominee, Mich.; Marinette, Kewaunee, Manitowoc, and Milwaukee, Wis.; and from Mackinaw City, Mich.; to the western termini of the eastern trunk lines and points east thereof for six alternate months of the fiscal year ended June 30, 1916. The result is as follows:

From and through—	Tons.	Per cent of total.
Chicago and Chicago junctions.....	7,444,376	82.56
East St. Louis.....	1,035,717	11.49
Mackinaw City, and across lake from Manistique, Menominee, Kewaunee, Manitowoc, and Milwaukee.....	536,755	5.95
Total.....	9,016,848	100

This statement is admittedly incomplete. The tonnage moving from and through Peoria, Ill., and the other upper Mississippi River crossings is not shown, and the tonnage carried by the Toledo,

St. Louis & Western from East St. Louis is not included. The density of Michigan's through traffic can not be determined solely by an examination of the figures showing the tonnage moving across lake, but the fact that nearly 6 per cent of the total tonnage shown on the statement moved across the lake shows that the car-ferry routes are entitled to consideration. In considering this statement, which was introduced to show that the through tonnage moving across Ohio and Indiana greatly exceeds the volume passing through Michigan, it should be borne in mind that a considerable portion of the Chicago tonnage is carried by the Michigan lines. For the period January 1 to November 30, 1916, the Grand Trunk, the Michigan Central, and the Pere Marquette carried 23 per cent of the total eastbound tonnage moving from or through Chicago or Chicago junctions. Part of the tonnage credited to the points on the west bank of Lake Michigan moved southward through Michigan and eastward through Indiana and Ohio.

There has been a notable increase in the volume of through tonnage traversing central freight association territory. In 1888 the tonnage moving through Chicago junctions to eastern territory was 2,364,627 tons. In 1916 it had increased to 16,914,244 tons. Between 1895 and 1916 the tonnage moving through East St. Louis to the same destinations increased from 735,879 tons to 2,078,463 tons. There has been no corresponding increase in the tonnage handled over the car-ferry routes. In 1903 the Pere Marquette handled with its car ferries 58,017 carloads of freight. In 1915 the total was 57,969 carloads. The lowest figure is 45,000 cars for 1908 and the highest 70,000 cars for 1910.

The Commission must conclude from all the evidence that the total through tonnage traversing the states of Ohio and Indiana greatly exceeds that carried through Michigan, but at the same time the conclusion must be reached that the lines traversing the southern part of the lower peninsula are to be ranked among the leading trunk lines of the east, and that the cities located on their principal routes are in "the great channels of through transportation" between the east and the west.

Partially offsetting Michigan's relative disadvantage as indicated by the statistics set forth in the preceding pages is the fact that high-grade manufactured articles are produced in the lower peninsula. The furniture and automobile industries have already been mentioned. Not only has the rapid development of these industries in recent years increased the outbound tonnage, but it has meant a substantial increase in the shipments of raw materials from other states, notably lumber and coal and the various articles used in the manufacture of automobiles. In the Kalamazoo Valley are

large paper mills which furnish the carriers with a heavy tonnage that is admittedly desirable. Salt and the products of gypsum are also produced in the lower peninsula in considerable quantities. Moreover, the density of population in the southern part of the lower peninsula compares favorably with that of Ohio and Indiana, the population per square mile being as follows: For the 29 most southerly counties in Michigan, 96.3; for the state of Indiana, 74.9; and for the state of Ohio, 117.1.

In *C. F. A. Class Scale Case*, 45 I. C. C., 254, the carriers in central freight association territory submitted for the approval of the Commission tariffs providing for increased class rates for application throughout that territory. In the rate adjustment proposed by the carriers in that proceeding all points in southern Michigan located on and south of the main line of the Michigan Central were grouped with points in northern Ohio and northern Indiana in a rate territory known as zone A. The inclusion of this part of the state of Michigan in zone A, which was disapproved by some of the carriers, is attributable to the influence of some of the more important Michigan lines, and appears to be a definite and voluntary recognition on their part that this portion of the state is entitled to the same treatment in the construction of rates as the territory immediately to the south. Four of the Michigan cities on whose behalf formal complaints have been filed, Kalamazoo, Marshall, Battle Creek, and Jackson, are located in the territory known as zone A. As part of the same rate adjustment the carriers proposed to apply somewhat higher rates to and from a territory in the state of Michigan known as zone B, embracing the territory north of zone A, and south, generally speaking, of a line drawn from Bay City to Muskegon. Grand Rapids, Saginaw, and Lansing are in this zone. To and from points in the extreme northern part of the peninsula, known as zone C, still higher rates were proposed. The Commission approved the inclusion of southern Michigan in zone A, and approval was likewise given to higher rates to and from zone B. To and from zone C, and subdivisions thereof, the Commission suggested that the carriers apply differentials over the zone B rates.

#### THE DISTANCES TO PHILADELPHIA, BALTIMORE, ETC.

At various stages of this proceeding exhibits have been introduced by witnesses for the defendants showing that the distances from points in Ohio and Indiana to certain eastern points south of New York, such as Baltimore, Md., and Richmond, Va., are less than the distances to the same points from the cities in Michigan. They contend that it is unfair to consider only the distances to New York,

and that if comparison is made of the average distances to Atlantic ports, Michigan is found to be at a disadvantage. The defendants' position is made clear in the following excerpt from their brief:

The Pennsylvania strikes from the center of central freight association territory into the center of eastern trunk line territory, and when it is remembered that the system of rates which we are here considering is not a system of rates between central freight association territory and New York City, but a system of rates between central freight association territory and eastern trunk line territory as a whole, we see the essential fairness of this adjustment. The use of the Pennsylvania mileages in the making of rates between the two territories approximates, roughly, at least, the use of an average mileage. \* \* \* It is inconceivable that any system could have endured \* \* \* which took into consideration only mileages from points in central freight association territory to one city in eastern trunk line territory, unless the mileages to that one city were so figured as to result roughly, at least, in the use of average mileages between points in the two territories.

The following table shows, for example, that although the short-line distances from Grand Rapids and Lansing to New York are approximately the same as the distances to New York from certain points in Ohio and Indiana, a comparison of the average distances from these points to Boston, New York, Philadelphia, Baltimore, and Richmond is unfavorable to the Michigan cities:

From—	Percent- age basis.	Shortest present mileage to—					
		Boston.	New York.	Phila- delphia.	Balti- more.	Rich- mond.	Average to the 5 points.
Grand Rapids, Mich.....	96	844	761	781	761	856	801
Fort Wayne, Ind.....	90	847	761	669	649	727	731
Dunkirk, Ind.....	89	925	761	668	648	676	726
Ironton, Ohio.....	87	924	758	667	571	439	672
Bluffton, Ind.....	90	870	766	674	654	715	735
Hartford City, Ind.....	90	905	771	678	658	711	745
Lansing, Mich.....	95	783	701	721	694	791	733
Lima, Ohio.....	80	802	702	610	590	666	674
Midland City, Ohio.....	84	867	703	644	548	556	664
Dayton, Ohio.....	84	866	703	611	576	603	672
Springfield, Ohio.....	82	842	706	614	571	602	667
Findlay, Ohio.....	79	771	691	628	554	648	658

It will be observed that Grand Rapids and Fort Wayne, for example, are equidistant from New York, but turning to the figures shown in the last column we find that the average distance from Grand Rapids to the five eastern cities is 70 miles greater than the average distance from Fort Wayne to the same points. From this evidence we are apparently expected to conclude that in spite of Michigan's favorable showing when only the distances to New York are considered, the rates from points in Ohio and Indiana are properly lower because of their relatively short distances to the southern ports and to the Virginia cities. No such conclusion can properly be drawn from this evidence. The foregoing history of the rate adjust-

ment shows clearly that the distances to New York were the only ones considered in determining the percentages which were assigned to the various groups, and witnesses for the defendants expressly admitted upon cross-examination that the distances to other points than New York played no part in the establishment of the rates. It is true that one witness expressed the opinion that the Pennsylvania distances to New York may have been selected as the basis of the percentage formula because they represented an average of the distances to the several ports, but no other evidence of record lends support to this view. On the contrary, it definitely appears, as previously stated, that the Pennsylvania distances were in the majority of instances the shortest. An examination of the cases in which we have discussed the port differentials shows that the conditions which led to their establishment and continuance had not even a remote connection with the factors which determined the outlines of the groups in central freight association territory, or the percentages assigned to them. *New York Produce Exchange v. B. & O. R. R. Co.*, 7 I. C. C., 612; *In the Matter of Differential Rates*, 11 I. C. C., 13; *Chamber of Commerce of N. Y. v. N. Y. C. & H. R. R. Co.*, 24 I. C. C., 55.

There is merit in the defendants' contention that if the average distances to all the eastern ports had been considered in determining the percentages to be assigned to the various groups, Michigan's disadvantage in distance to the southern ports should have due consideration, but the defendants answer their own contention tersely in their brief when they observe that "the rates were not made in that way." In constructing the rates from Indianapolis, for example, no consideration was given to the distance from that point to Boston, which exceeds the distance to New York, and it would apparently be unfair to maintain higher rates to New York from the Michigan points solely because their distances to the southern ports exceed those from points in Ohio and Indiana.

Another point raised by the defendants in this connection deserves consideration. The rates from Pittsburgh to the ports south of New York are made lower than the New York rates by the usual differentials. The rates from Buffalo, on the other hand, to Philadelphia and Baltimore are the same as the rates from Buffalo to New York. The defendants contend that if the Michigan cities insist upon having their mileages figured through Buffalo rather than through Pittsburgh they should not be heard to say at the same time that their rates to Philadelphia and Baltimore should be lower than their rates to New York. In other words, they should not ask in the same breath for the Buffalo mileages and the Pittsburgh rates. While this contention is not without merit, it overlooks the fact



that the interterritorial rates are not made by combination on Buffalo or Pittsburgh, or by combination on any other gateway. It is proper to observe also that the propriety of maintaining the present port differentials with respect to traffic to and from the Michigan cities has received little attention upon this record. It is affirmatively shown that Michigan cities are principally interested in the rates to and from New York. If, after the establishment of reasonable and nondiscriminatory rates from Michigan to New York, it is found that transportation conditions do not warrant the continued observance of the port differentials with respect to Michigan traffic, that issue can be presented to us in the proper way. So little evidence has been addressed to that matter on the present record that the Commission would not be warranted in finding that the present relationship between the ports should be disturbed.

#### DISTURBANCE OF THE RATE ADJUSTMENT.

Witnesses for the defendants described in some detail the disturbances in the rate adjustment which would necessarily result from the rate reductions sought by the complainants. Most of the changes would be necessary to avoid departures from the long-and-short-haul provision of the fourth section of the act. In the complaint of the Petoskey Business Men's Association it is asked that Petoskey's basis be reduced from 120 per cent to 100 per cent. The map shows that south of the 120 per cent group there are several others whose percentages exceed 100 per cent, and that a reduction of Petoskey's rates to the basis sought would make it necessary for the defendants to observe the 100 per cent basis as a maximum in most of the northern part of the lower peninsula.

Similarly, a reduction from 96 per cent to 88 per cent in the rates to and from Grand Rapids, Kalamazoo, Battle Creek, and Marshall, and a reduction of Lansing's rate from 95 per cent to 82 per cent, would have a far-reaching effect. It will be observed that east of the 96 per cent group is a 95 per cent group whose rates would have to be reduced at least to 88 per cent if that basis were established from the present 96 per cent group. It will also be noted that east of Lansing there are two groups, whose present percentages are 92 per cent and 84 per cent, which would necessarily be reduced to at least 82 per cent if Lansing's prayer were granted.

Other disturbances would result in Ohio and Indiana because of the north-and-south lines extending from those states into Michigan. The Grand Rapids & Indiana, for example, extends northward from Richmond, Ind., to Mackinaw City, Mich. In hauling traffic to and from Grand Rapids and Kalamazoo, whose rates we are asked to re-



duce to 88 per cent, the Grand Rapids & Indiana would have to carry it through territory now embraced in the 90 and 92 per cent groups, and reductions in the rates to and from those groups might be necessary if the rates of Grand Rapids and Kalamazoo were reduced to 88 per cent. The New York Central handles its Kalamazoo traffic through Elkhart, Ind., a 96 per cent point. For similar reasons a large part of the groups in Ohio now taking percentages of 83, 84, and 85 would probably be reduced to 82 per cent if the rates of Lansing and Jackson were placed on that basis. It will be noted that the New York Central in reaching Lansing passes through several groups whose percentages exceed 82 per cent. Similarly, the Cincinnati Northern, in carrying *westbound* traffic to Jackson, traverses two groups whose percentages are higher than the 84 per cent basis claimed by Jackson. The complainants show, however, that in other similar instances in this same territory the defendants depart from the long-and-short haul principle when the circuitry of their routes makes it necessary or advisable to do so, and they take the position that the north-and-south lines serving the complaining cities, such as the Grand Rapids & Indiana and the Cincinnati Northern, could consistently meet at those points the rates of the short lines without making reductions at intermediate points. The disturbances described above are said by the defendants to represent the minimum changes, and they apprehend that others would follow. South Bend, for example, a 96 per cent point, is but a short distance west of Elkhart, and a reduction to 88 per cent made by the New York Central at the latter point would probably not be viewed with equanimity by South Bend shippers. Commercial competition might lead to other changes.

The defendants show also that to grant the relief sought by the complaining cities would necessitate reductions in the rates between certain points in Michigan and points south of Lake Erie. If the percentages of the Michigan points were reduced as requested the rates between those points and points in the Rochester-Syracuse and Williamsport-Cumberland rate groups would be materially lower than the rates from the same Michigan points to practically all intermediate territory in Ohio and western Pennsylvania. This can best be explained by an illustration. The class rates from Buffalo, N. Y., and Pittsburgh, Pa., to Petoskey, Mich., are, in cents, 66.2, 57.2, 44.1, 31, 26.3, and 22.1. If Petoskey's rates were reduced to the 100 per cent basis, as requested, the rates from points in the Rochester-Syracuse group to Petoskey would be as follows, in cents, 55.2, 47.8, 36.8, 28.3, 22.1, and 18.4, and those rates would have to be observed as maximum rates from Buffalo and Pittsburgh to avoid departures from the long-and-short-haul principle. Furthermore,

reductions would have to be made not only from Buffalo and Pittsburgh, but from points in Ohio as far west, generally speaking, as the line of the Wabash traversing the northwestern part of the state from Toledo to Fort Wayne, Ind. Similarly, the reductions sought in the rates to Petoskey from points in the Williamsport-Cumberland group would necessitate reductions from points in western Pennsylvania and from points in Ohio as far, generally speaking, as a line drawn from Sandusky to Mansfield and from Mansfield to Lima. Exhibits filed by the defendants show that reductions in the rates to Traverse City and Alpena, Mich., as sought by the complainants, would cause disturbances in the rates from points in Ohio and Pennsylvania similar to those already described, and in all these instances changes would have to be made in the eastbound rates as well as in the westbound rates.

#### LOSS OF REVENUE TO THE DEFENDANTS.

If the rates from practically the whole lower peninsula of Michigan were reduced in the manner suggested by the various complainants, a material loss in revenue to the carriers would be the inevitable result. Based on its tonnage for 1916 the Grand Rapids & Indiana estimates that its loss on Petoskey traffic would be \$3,528.90. On Cadillac traffic the loss would be \$5,241.83 to this carrier and \$2,615.86 to the Ann Arbor. The loss on Grand Rapids traffic for all the carriers serving that point except the Pere Marquette would be \$51,277.11. This estimate is based upon the original request of Grand Rapids that its rates be placed on a 90 per cent basis. These figures show only the estimated loss on traffic to and from the points named, and they would be considerably larger if they included the traffic moving to and from all points in the rate groups.

The Ann Arbor Railroad, which has never paid a dividend, has had during the last 10 years a net average income of \$151,840, but it is feared that even this will disappear because of the recent increases in the cost of labor and supplies. It is estimated that the cost of materials alone for the year 1917 will exceed by \$326,000 the cost for the previous year. Coal suitable for railroad fuel is not produced along the lines of the Michigan carriers. They obtain their fuel coal principally in Ohio and West Virginia and must pay the regularly published rates from the mines to their own junction points. During the fiscal year ended June 30, 1916, the Michigan lines paid \$2,761,321.77 as freight charges on their fuel coal. Many of the railroads in Ohio, Indiana, and Illinois obtain all or part of their fuel coal on their own lines and thus avoid this transportation cost.

A statement prepared by the Pere Marquette Railroad compares the freight revenue of that carrier on eastbound carload tonnage

originating on its line in Michigan for two representative months under the present rates with the revenue which would accrue under the rates sought by the complainants. Based on this tonnage the loss would be \$47,565.37, or 11.15 per cent of the revenue. Our attention is called to the fact that a reduction in the rates of the complaining cities would lead to a like reduction in the rates of other cities on whose behalf no complaints have been filed.

An elaborate financial statement filed of record by the defendants shows that the Michigan carriers can ill afford to stand a material loss in revenue at this time. For the lines designated "group A" lines<sup>1</sup> in the statement the average ratio of the net operating income to property investment for the 12 years 1905 to 1916, inclusive, was 3.59. During these 12 years the Ann Arbor did not pay a dividend, and the Pere Marquette paid a dividend only in one year, 1905. Defendants, assuming that they are entitled to an annual earning of 6 per cent on their property investment, conclude from the statistics presented of record that during the 12-year period the group A lines in Michigan had an average investment of \$118,005,017 per year upon which no earning whatever was made. The property investment figures shown in the exhibits are book values, and include the property investment of leased railway companies.

#### FOURTH SECTION APPLICATIONS.

The fact that the Ann Arbor Railroad has joined with other lines in according the 100 per cent basis of rates to points on the west side of Lake Michigan, while higher rates are maintained to and from certain intermediate points in Michigan, results in departures from the long-and-short-haul provision of the fourth section of the act, and the applications filed by the several carriers wherein they seek authority to continue the present adjustment were heard in connection with these complaints. That part of the main line of the Ann Arbor lying between Pennocks and Frankfort is located in rate groups taking 110 per cent or 112 per cent of the Chicago-New York rates. Points on this line are intermediate to Kewaunee, Manitowoc, and Menominee, west bank points taking the 100 per cent basis.

The establishment of the 100 per cent basis at the west bank points was the result of several competitive influences which existed at the time of the hearing. The principal competition was that between the all-rail routes and the car-ferry routes. The latter can exist only by obtaining a part of the through traffic which otherwise

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<sup>1</sup> The group A lines are the following: Ann Arbor; Boyne City, Gaylord & Alpena; Chicago, Kalamazoo & Saginaw; Detroit & Charlevoix; Detroit & Mackinac; Detroit & Toledo Shore Line; Grand Rapids & Indiana; Grand Trunk lines; Kalamazoo, Lake Shore & Chicago; Manistee & Northeastern; Michigan Central; and Pere Marquette.

would seek the all-rail routes. In addition to this competition, there was that of the so-called break-bulk routes maintained by several of the Michigan lines in connection with certain boat lines with which they interchange through traffic at points on the east side of the lake. The rates applying over these routes are lower than those maintained all rail and by car ferry, the differentials on the six classes being, in cents, 3, 2, 2, 1, 1, 1. The lake-and-rail routes have for years carried package freight to and from the west bank points, their rates being lower than those applying over the break-bulk routes.

Upon oral argument it was stated that a large number of vessels were withdrawn from the lakes subsequent to the hearing, and that therefore the competition which is said to have caused the relatively low rates at the west bank points has in part disappeared. Proper disposition of the fourth section applications can not be made until the Commission is further advised on this point. No finding will, therefore, be made at this time with respect to those applications, and they will be assigned for further hearing.

#### CONCLUSION.

The foregoing evidence shows, on the one hand, that the transportation conditions in the state of Michigan, as a whole, are less favorable than those in Ohio and Indiana, and, on the other hand, that the difference is not sufficiently marked, especially in the southern part of the peninsula, to warrant the decided differences in the rates now existing. Grand Rapids, Kalamazoo, Marshall, Battle Creek, Lansing, and Jackson are located on important channels of through transportation, and even the microscopic analysis of the situation made by witnesses for the defendants fails to reveal such a contrast between the transportation conditions in the southern part of the lower peninsula and those in northern Ohio and Indiana as to justify the prevailing differences in rates. In connection with the contention of some of the defendants' witnesses that all points in Michigan, including those in the extreme southern part of the lower peninsula, should take higher rates than points just across the state line in Ohio and Indiana, attention is called to the fact that the defendants have voluntarily embraced in the 96 per cent group points in Michigan as far north as Grand Rapids and Muskegon. It will be noted that this same group extends far south into Indiana. The extent of the 92 per cent eastbound group is also of interest in this connection. The percentages assigned to the cities in southern Michigan must be reduced, not to such an extent as to place them on the basis which the percentage formula would give them, for we have already explained that they may not properly demand that their rates be

47 I. C. C.

constructed on that basis, but to such an extent as to reduce substantially the present spreads. These groups were arbitrarily created and arbitrarily maintained, and any reductions in the percentages must necessarily be arbitrary.

Upon careful consideration of all the evidence, and of the exceptions made to the report of the examiner, we find and conclude that the rates between the complaining cities and points in eastern territory are not shown to be unreasonable *per se*, but that the rates are so constructed as to give an undue preference to cities and localities in the states of Ohio and Indiana, and to the city of Detroit, to the undue prejudice and disadvantage of the complaining cities. We further find that the prejudice and disadvantage found to exist can be removed only by reducing the percentages of the Michigan groups as follows: Points in the present 84 per cent group to 82 per cent; Jackson, Saginaw, and Bay City, and other points in the 92 per cent group to 88 per cent; Lansing and other points in the 95 per cent group to 91 per cent; Grand Rapids, Kalamazoo, Marshall, and Battle Creek, and other points in the 96 per cent group to 92 per cent; and there should be uniform reductions of 4 points in the percentages assigned to the groups north of the present 100 per cent group. It is thought advisable to leave the 100 per cent group on its present basis, not only because little evidence has been addressed to the rates to and from points in that group, but because it is clearly shown that the transportation conditions in the northern part of the lower peninsula are relatively so unfavorable as to warrant a somewhat sharper gradation in the group percentages than is found in the territory to the south; and in *C. F. A. Class Scale Case, supra*, the Bay City-Muskegon line was proposed by the carriers and approved by the Commission as a proper line of demarcation between the two rate territories. The evidence of record does not warrant a change in the outline of any of the groups as at present constituted, except where changes are necessitated by the reductions here suggested. With respect to westbound traffic, for example, the reduction of the 92 per cent group to 88 per cent will doubtless make it necessary to reduce to 88 per cent the rates to and from points in the northern part of the present 90 per cent group.

The reductions above suggested will place the Michigan shippers more nearly on an equality with their competitors in Ohio and Indiana, narrowing the striking differences in rates previously mentioned in this report; the rates to and from Michigan points will remain on a somewhat higher basis than those to and from points in Ohio and Indiana, in recognition of the relatively unfavorable transportation conditions in the state of Michigan; the long-standing relationship between the groups in the southern part of the lower

peninsula and those in the northern part will be preserved, a result most desirable in view of the keen competition between shippers in the two parts of the peninsula; except for the readjustment of rates in the lower peninsula itself there will be little disturbance of the rate structure; and the notable and unexplained spread between the Detroit rates and those of other Michigan points will be materially reduced. A fairer and more consistent rate structure will be the result. The defendants' contention that the strict application of the percentage formula at Michigan points would be without justification, historical or otherwise, and that shippers in other parts of central freight association territory would thereby be incited to demand that their rates be also constructed on a mileage basis, need not be dwelt upon, because in the conclusions here suggested no mileage scale is adopted, and it is expressly stated that the percentage formula can not be accepted as the criterion to be used in determining the propriety of rates in this territory. The further contention that the Michigan lines are unable at the present time to withstand the losses resulting from a material reduction in their rates is offset in a measure by the recent decision of the Commission in *The Fifteen Per Cent Case*, 45 I. C. C., 303, in which the carriers were permitted to raise the whole structure of class rates between central freight association territory and eastern territory. The conclusions reached in that report suggest this as an appropriate time for a realignment of the Michigan rates.

An appropriate order will be entered.



No. 8560.  
NORTH CAROLINA PINE ASSOCIATION, INCORPORATED,  
v.  
NORFOLK & WESTERN RAILWAY COMPANY ET AL

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*Submitted May 12, 1916. Decided November 21, 1917.*

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Rates on pine lumber, in carloads, to Pittsburgh, Pa., Buffalo, N. Y., and points taking the same rates, from "Virginia cities" and certain intermediate points, and from certain points south of Virginia cities from which the rates from those gateways are applied as minima, found justified. Complaint dismissed.

*Claude W. Owen* for complainant.

*R. Walton Moore* and *Charles D. Drayton* for Norfolk & Western Railway Company; Richmond, Fredericksburg & Potomac Railroad Company; Washington Southern Railway Company; Atlantic Coast Line Railroad Company; Seaboard Air Line Railway Company; and Southern Railway Company.

*R. B. Cooke* for New York, Philadelphia & Norfolk Railroad Company, and Pennsylvania Railroad Company.

*G. A. Wingfield* for Virginian Railway Company.

*W. S. Bronson* for Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, an incorporated association, is located at Norfolk, Va. By complaint, filed December 25, 1915, it alleges that defendants' rates on pine lumber, in carloads, to Pittsburgh, Pa., and points taking the same rates, from Norfolk, Suffolk, Petersburg, Richmond, Lynchburg, and Roanoke, Va., hereinafter called the Virginia cities; from Virginia points intermediate thereto; from points south thereof from which the rates from Virginia cities are applied as minima; and from certain branch-line points of the initial carriers, are unreasonable, unjustly discriminatory, and unduly prejudicial. At the hearing it was stated for complainant that, with the exception of several points south of the Virginia cities, hereinafter referred to, the only originating points concerned are the Virginia cities and points intermediate thereto taking the same rates. The complaint named various of defendants' tariffs in which the rates in issue were published. Prior to the hearing an amended complaint was filed,

in which other tariffs of defendants were named, and in which it was alleged that in addition to the rates attacked to Pittsburgh and Pittsburgh rate points, all other rates set forth in those tariffs and in the tariffs referred to in the original complaint were unreasonable and unjustly discriminatory to the extent that they exceeded by more than 5 per cent the rates in effect prior to January 1, 1915. These tariffs publish rates not only to Pittsburgh territory but also to points generally east of Pittsburgh territory, including the New England states. At the hearing objection was made on behalf of defendants to the sufficiency of the amended complaint, it being contended that it was too vague and indefinite to give the carriers proper notice of the rates concerned, and that the carriers were not prepared to defend any rates included therein. It developed that complainant is interested only in the rates to Pittsburgh and points taking the same rates and Buffalo and points taking the same rates, and the objections interposed were withdrawn for each of the defendants represented except the Chesapeake & Ohio Railway. The rates of the Chesapeake & Ohio to Buffalo are not before us, as the amended complaint attacked only rates which exceeded by more than 5 per cent the rates in effect prior to January 1, 1915, and the present rates published by that defendant from the Virginia cities to Buffalo and Buffalo rate points do not exceed by more than 5 per cent those in effect prior to January 1, 1915. Rates are stated in cents per 100 pounds. References hereinafter to Pittsburgh and Buffalo rates will be understood to include points taking the same rates.

The rates on lumber from the Virginia cities to Pittsburgh and Buffalo are generally commodity rates not in excess of the sixth-class rates, governed by the official classification, though certain of the carriers have not published the rates as commodity rates, and the sixth-class rates apply. At the time of hearing the sixth-class rates from the Virginia cities to Pittsburgh were 17.3 cents; to Buffalo, 19.8 cents. The rate on lumber from each of the Virginia cities to Pittsburgh was 17.3 cents; to Buffalo, 17.3 cents from some points and 19.8 cents from others. Prior to *The Five Per Cent Case*, 31 I. C. C., 351, and 32 I. C. C., 325, the rates to Pittsburgh were 16 cents; to Buffalo, 16 cents from the points from which the 17.3-cent rates apply and 19 cents from the points from which the 19.8-cent rates apply. The attack on the Pittsburgh rates is based upon the twofold contention that the rates were excessive before the increase and that there was no justification for an increase in the former rates in excess of 0.8 cent. Rates of 13.8 cents are asked to Pittsburgh, these rates being arrived at by adding 0.8 cent to a proportional rate of 13 cents applicable on lumber in connection with certain lines from the Virginia

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*Claude W. Owen* for complainant.

*R. Walton Moore* and *Charles D. Drayton* for Norfolk & Western Railway Company; Richmond, Fredericksburg & Potomac Railroad Company; Washington Southern Railway Company; Atlantic Coast Line Railroad Company; Seaboard Air Line Railway Company; and Southern Railway Company.

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in which other tariffs of defendants were named, and in which it was alleged that in addition to the rates attacked to Pittsburgh and Pittsburgh rate points, all other rates set forth in those tariffs and in the tariffs referred to in the original complaint were unreasonable and unjustly discriminatory to the extent that they exceeded by more than 5 per cent the rates in effect prior to January 1, 1915. These tariffs publish rates not only to Pittsburgh territory but also to points generally east of Pittsburgh territory, including the New England states. At the hearing objection was made on behalf of defendants to the sufficiency of the amended complaint, it being contended that it was too vague and indefinite to give the carriers proper notice of the rates concerned, and that the carriers were not prepared to defend any rates included therein. It developed that complainant is interested only in the rates to Pittsburgh and points taking the same rates and Buffalo and points taking the same rates, and the objections interposed were withdrawn for each of the defendants represented except the Chesapeake & Ohio Railway. The rates of the Chesapeake & Ohio to Buffalo are not before us, as the amended complaint attacked only rates which exceeded by more than 5 per cent the rates in effect prior to January 1, 1915, and the present rates published by that defendant from the Virginia cities to Buffalo and Buffalo rate points do not exceed by more than 5 per cent those in effect prior to January 1, 1915. Rates are stated in cents per 100 pounds. References hereinafter to Pittsburgh and Buffalo rates will be understood to include points taking the same rates.

The rates on lumber from the Virginia cities to Pittsburgh and Buffalo are generally commodity rates not in excess of the sixth-class rates, governed by the official classification, though certain of the carriers have not published the rates as commodity rates, and the sixth-class rates apply. At the time of hearing the sixth-class rates from the Virginia cities to Pittsburgh were 17.3 cents; to Buffalo, 19.8 cents. The rate on lumber from each of the Virginia cities to Pittsburgh was 17.3 cents; to Buffalo, 17.3 cents from some points and 19.8 cents from others. Prior to *The Five Per Cent Case*, 31 I. C. C., 351, and 32 I. C. C., 325, the rates to Pittsburgh were 16 cents; to Buffalo, 16 cents from the points from which the 17.3-cent rates apply and 19 cents from the points from which the 19.8-cent rates apply. The attack on the Pittsburgh rates is based upon the twofold contention that the rates were excessive before the increase and that there was no justification for an increase in the former rates in excess of 0.8 cent. Rates of 13.8 cents are asked to Pittsburgh, these rates being arrived at by adding 0.8 cent to a proportional rate of 13 cents applicable on lumber in connection with certain lines from the Virginia

gateways to Pittsburgh. Rates of 16.8 cents are asked to Buffalo, the present rates being attacked upon the ground that the increased rates exceed by more than 5 per cent the rates in effect prior to *The Five Per Cent Case*, *supra*. Since the hearing the sixth-class rate from Virginia cities to Pittsburgh has been increased to 20 cents and to Buffalo to 22 cents, under authority of our decision in *The Fifteen Per Cent Case*, 45 I. C. C., 303. The commodity rates on lumber from and to these points remain unchanged.

In support of the view that the locals to Pittsburgh should be reduced to the level of the proportional rate mentioned, attention is called for complainant to the fact that the local and proportional rates, respectively, from the Ohio River gateways to Pittsburgh and Buffalo territories are the same, and that there is a difference of not more than 1 cent in those rates to eastern points while there is a spread of 4.3 cents between the local and proportional rates from the Virginia cities to Pittsburgh. The rates to Pittsburgh and Buffalo are compared with the rates maintained from Ohio River crossings to the same points. It is contended for defendants that there is no relation between the local and proportional rates from the Virginia cities. In *Massie & Pierce Lumber Co. v. N. & W. Ry. Co.*, 33 I. C. C., 14, we said:

\* \* \* The 13-cent proportional rate from certain Virginia cities and junction points to Pittsburgh is made to meet the unpublished division of rates from the far south to the same destination which is accepted by the lines north of Richmond, and is intended primarily as a part of through rates, which, by its use, are equalized through these gateways in competition with rates of other carriers. This accounts for the lower rates to Pittsburgh than to Columbus. This competition does not affect the rates to Columbus as it does the rates to Pittsburgh, for the northern lines do not make proportional rates lower than the local rates to points in central freight association territory, such as Columbus, because on traffic from the far south to points west of Pittsburgh they are unable to compete with the more direct routes through the Ohio River crossings.

In no instance have we employed this proportional rate as a measure of the rate that should apply on traffic originating at the Virginia cities, and no sufficient reasons are advanced in this case why a different significance should attach to that rate.

Generally, the rates between the Virginia cities and Buffalo-Pittsburgh and central freight association territories are governed by the official classification and are on the trunk line basis. Class rates from the Virginia cities to Pittsburgh are now, and long have been, the same as from Columbus, Ohio, to the Virginia cities, which are in turn the same as from Columbus to Baltimore. A 5 per cent increase in the 16-cent rate would have resulted in a rate to Pittsburgh of 16.8 cents. Subsequent to the entry of our original orders in *The*

*Five Per Cent Case, supra*, the carriers operating in this territory petitioned us for authority to make slightly additional increases in certain of their rates in order to preserve proper relationships. Under our supplemental order of January 4, 1915, they were authorized, with respect to their class rates, to employ the Columbus-Baltimore basis between Pittsburgh and the Virginia cities and, with respect to specific commodity rates which were the same as the class rates from and to the same points, to make increases corresponding to those authorized in the class rates. Under authority of this order defendants established a rate of 17.3 cents from the Virginia cities to Pittsburgh, this being the same as the sixth-class rate Columbus to Baltimore which was established following *The Five Per Cent Case*.

For defendants it is stated that with respect to the Virginia cities the location of Buffalo is substantially dissimilar from the location of Pittsburgh, and that the rate basis is altogether different. For instance, the short-line distance over available routes from Norfolk to Pittsburgh in connection with the Norfolk & Western by way of Shenandoah Junction and the Baltimore & Ohio Railroad is 714 miles, while it is 1,003 miles to Buffalo by way of Shenandoah Junction, the Baltimore & Ohio, and the Buffalo, Rochester & Pittsburgh Railway, and from Richmond, Va., to Pittsburgh, the short-line distance over any workable route is 418 miles via the Richmond, Fredericksburg & Potomac Railroad to Potomac Yards, Va., and Baltimore & Ohio, while to Buffalo it is 552 miles over the Richmond, Fredericksburg & Potomac Railroad to Washington, D. C., and Pennsylvania beyond. It is said that for these reasons the employment of the Columbus-Virginia cities rates as minima to Buffalo is not practicable, and that many years ago the class rates from the Virginia cities to Buffalo were made fixed differentials over the Baltimore-Buffalo rates, the sixth-class differential having been made 6 cents. The supplemental order above mentioned permitted a differential of 6 cents on sixth class, "between Buffalo, Dunkirk, and interior New York state points and Virginia cities." Following *The Five Per Cent Case, supra*, the sixth-class Baltimore-Buffalo rate was increased from 18 cents to 18.8 cents. The application of the sixth-class differential of 6 cents over the Baltimore-Buffalo rate resulted in 19.8 cents from Virginia cities to Buffalo. While rates upon this basis have been observed by the Chesapeake & Ohio in all instances, they have not been uniformly observed by the other lines. The rate of the Virginian Railway from stations Kenyon, Va., to Stewartsville, Va., inclusive, is 19½ cents. Some years ago the New York, Philadelphia & Norfolk Railroad established the same rate to Buffalo from Norfolk harbor as applied to Pittsburgh, namely, 16 cents, and later the same rate was made applicable from Richmond by the Richmond, Fredericksburg & Potomac Railroad; from Norfolk proper by certain



lines; and from Suffolk and Petersburg by all lines serving those points. It is contended for defendants that the lower basis was first established at Norfolk harbor as an emergency measure during a depressed period in the lumber trade to enable Virginia shippers to reach the Buffalo market. This rate was increased to 17.3 cents. It was stated on behalf of defendants that a rate of 17.3 cents from any of the Virginia cities to Buffalo is unreasonably low, and that prior to the filing of this complaint the carriers had considered making the rate uniformly 19 cents from all the Virginia cities, but deferred doing so due to *The Five Per Cent Case*.

There were cited for complainant by way of comparison the rates from St. Louis, Mo., and various Ohio River crossings to the destinations here concerned, together with the short-line distances and ton-mile earnings. The rate from Cincinnati, particularly referred to, to Pittsburgh and Buffalo is 10.5 cents. The short-line distances from Cincinnati to Pittsburgh and Buffalo are 311 and 445 miles, respectively, and the 10.5-cent rate yields 6.7 mills and 4.7 mills per ton-mile, respectively. The rates from the other Ohio River crossings, Louisville, Ky., Evansville, Ind., Cairo, Ill., and St. Louis, Mo., to Pittsburgh and Buffalo are higher than from Cincinnati, the rate from St. Louis to those destinations being 18.4 cents. The distance from St. Louis to Pittsburgh is 613 miles and to Buffalo 708 miles. The average rate from the designated Ohio River crossings to Pittsburgh and Buffalo is 15.86 cents, and the ton-mile earnings to Pittsburgh 6.19 mills, and to Buffalo 5.04 mills. Complainant shows that the short-line distances from the five most important Virginia cities to Pittsburgh are: From Norfolk, 508 miles; Lynchburg, 476 miles; Roanoke, 455 miles; Petersburg, 441 miles; and Richmond, 418 miles, and the average ton-mile earnings 7.5 mills. The short-line distances to Buffalo are: From Norfolk, 633 miles; Lynchburg, 610 miles; Roanoke, 625 miles; Petersburg, 574 miles; and Richmond, 552 miles, and the 17.3-cent rate yields an average ton-mile revenue of 5.8 mills and the 19.8-cent rate 6.6 mills. It is also to be remembered that the rates under consideration apply only on traffic originating at the Virginia cities, while the rates from the Ohio River gateways, though published as local and proportional rates, are essentially proportional rates. The rates from those gateways, defendants' witnesses testified, were established upon a basis lower than otherwise would have been observed, in order to make it possible for traffic from Arkansas, Mississippi, and other distant territories to compete in the northern markets. It is further urged for defendants that the rates from the Ohio River apply over lines operating in central freight association territory where transportation conditions are more favorable than from the Virginia cities to the destinations in

question. The average distance between all main-line junctions of the Norfolk & Western, Norfolk to Roanoke, inclusive, and Pittsburgh is 609 miles, the average ton-mile revenue under the 17.3-cent rate 5.7 mills, the average revenue per car, based on 23 tons per car, \$79.58, and the average car-mile revenue, 13.1 cents.

It is contended for complainant that it is not shown that there is any movement of lumber either from Columbus to Baltimore or from Baltimore to Columbus or Pittsburgh, and that the sixth-class rate from Columbus to Baltimore is not a proper measure of the lumber rate from Norfolk to Pittsburgh. It would appear, however, that there can be little valid objection to the basis employed, since the rates made under this adjustment are the same as the sixth-class rate for the one-line haul of the Baltimore & Ohio through central freight association-trunk line territories for a distance of 513 miles.

It is stated for complainant that the increases in excess of 0.8 cent have resulted in disturbing rather than in preserving the relationship of the rates in this territory, and that the "present adjustment of through and local rates from this territory to Buffalo and Pittsburgh is obviously confused and unsatisfactory." Whatever criticism may be justified as to the lack of uniformity respecting certain of these rates, it may be observed that complainant apparently recognizes the propriety of higher rates from the Virginia cities to Buffalo than to Pittsburgh, as the rates asked to Buffalo are 3 cents higher than those asked to Pittsburgh.

It was stated for the defendants maintaining the proportional rates referred to that it is their intention to eliminate these rates from their tariffs as soon as they are able to secure proper representation in the tariffs publishing joint rates from southern points.

At the hearing the allegations of discrimination due to rate adjustments on pine between the Virginia cities and points in eastern Tennessee, Alabama, Mississippi, and other southern states, and between the rates on pine from the Virginia cities and on hemlock from points in Pennsylvania and West Virginia were practically abandoned. The discrimination chiefly complained of by the various witnesses testifying in complainant's behalf was due to the relative adjustment of the rates from the Virginia cities, on the one hand, and the Carolinas on the other. However, no discriminatory adjustment is specifically alleged in favor of the Carolinas. On the contrary, the complainant association is represented in the complaint as an organization conducted "for the purpose of furthering the interests of its members, the pine manufacturers of Virginia, North Carolina, and South Carolina, etc.," and certain of the Virginia mills on whose behalf testimony was offered also operate in the Carolinas. It is doubtful, therefore, whether this question is properly before us under the

allegations of the complaint. In any event, the record does not sustain complainant's contentions in this regard.

From most points south of the Virginia gateways the rates on lumber moving through the Virginia cities to points in the destination territory are joint rates, constructed on the basis of locals to the gateways, plus a specific of 13 cents beyond. Certain of the defendant lines, it appears, are not parties to the tariffs publishing the joint rates, and it is these lines which have published the proportional rate hereinbefore referred to in order that they may participate in the southern traffic. The joint rates from points south of the Virginia cities, to the extent that they were formerly lower than the increased rates from Virginia cities, were increased to the basis of the increased rates from the Virginia cities. The points specifically referred to in the record are Franklin, Arringdale, and Butterworth, Va. From Franklin, which may be taken as typical of the points named, the joint rate to Pittsburgh, which is 17.3 cents at the present time, was 16½ cents prior to the increase. It is explained for defendants that the revision of these rates followed a long existing adjustment under which the Virginia cities rates have applied as minima from points beyond, and that following the increase in the rates from Virginia cities, the readjustment in the rates from points immediately south of the gateways became imperative under the requirements of the fourth section of the act. The local rate from Franklin to Suffolk is 3½ cents and from Butterworth to Petersburg, 3 cents. These rates in connection with the proportional rate of 13 cents published by the Norfolk & Western from the Virginia cities to Pittsburgh result in combination rates of 16½ cents from Franklin and 16 cents from Butterworth, which combination rates are lower than the joint through rates of 17.3 cents. These departures from the fourth section were made without authority from this Commission and are therefore unlawful.

We find that defendants have justified the reasonableness of the rates assailed. The fourth section violations above mentioned must be removed promptly.

The record discloses that from those Virginia gateways from which the 17.3-cent rate applies to Buffalo, the rate observed as a maximum at intermediate points is 19.8 cents. These departures from the fourth section are protected by appropriate applications which were not set for hearing. As these applications are concerned in other proceedings now pending before us they will not here be considered.

An order dismissing the complaint will be entered.

COMMISSIONERS ATTCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.

No. 9034.  
NATIONAL UTILIZATION CORPORATION ET AL.  
v.  
BOSTON & ALBANY RAILROAD COMPANY ET AL.

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*Submitted March 10, 1917. Decided November 21, 1917.*

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Rates on scrap waste leather, waste and refuse hair, fertilizer horn, and fur scrap in carloads from points in Connecticut and Massachusetts to Norfolk, Va., over all-rail and rail-and-water routes found justified. Complaint dismissed.

*Cadwallader J. Collins and Antonio J. Smith* for complainants.  
*R. Walton Moore and W. A. Cole* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainants are corporations engaged at Norfolk, Va., in the preparation of ingredients for use in the manufacture of commercial fertilizer. By complaint, filed July 8, 1916, they allege that defendants' all-rail and rail-and-water rates on scrap waste leather, waste and refuse hair, fertilizer horn, and fur scrap in carloads from certain points in Connecticut and Massachusetts to Norfolk, Va., are unreasonable and unduly prejudicial. Reparation is asked and the establishment of reasonable rates for the future. Rates are stated in cents per 100 pounds.

The official classification rates scrap waste leather, the principal commodity in question, and animal horns in carloads, fifth class; fertilizer hair, sixth class. No carload rating is provided on fur scrap. Since 1909, by exception to the classification, the New England lines have provided sixth-class ratings on numerous fertilizer materials, including those here under consideration. For about five years prior to June 12, 1908, the rates from all stations in Massachusetts on the Boston & Maine Railroad to Norfolk on scrap waste leather and refuse hair were 22 cents, the same as the sixth-class rates. On that date the carrier named, in order to meet threatened or potential water competition, established a rate of 18 cents from Lynn, Mass., and on various dates thereafter reduced the rates on leather scrap from Haverhill, Mass., to 20 cents; from Peabody, Mass., to 20 cents and later to 18 cents; and from Salem and Marlboro, Mass., to 18 cents. On February 23, 1915, following the *Five Per Cent Case*, 32 I. C. C., 325, the 22-cent rates were increased to

47 I. C. C. 467

23.1 cents; the 20-cent rate to 21 cents; and the 18-cent rates to 18.9 cents. Effective May 8, 1916, the rates lower than 23.1 cents were increased to that amount. The reduction to 18 cents in the rate from Lynn was followed by a reduction to 18 cents in the all-rail rates on scrap waste leather, refuse hair, and fur scrap from points in Massachusetts and Connecticut on the New York, New Haven & Hartford Railroad, herein called the New Haven, in connection with the Pennsylvania and the New York, Philadelphia & Norfolk railroads, which reduction in turn forced a decrease to 18 cents in the rates on scrap leather, waste and refuse hair, fertilizer horn, and fur scrap from Boston & Albany points in Massachusetts over its rail-and-water route in connection with the Merchants & Miners Transportation Company. On February 23, 1915, following the *Five Per Cent Case*, the Boston & Albany increased its rail-and-water rates from 18 cents to 18.9 cents. On August 4 the New Haven increased the 18-cent rates to 23.1 cents, and on November 16 the Boston & Albany increased its rail-and-water rate of 18.9 cents to 21.1 cents, restoring the normal differential of 2 cents less than the all-rail rates of the New Haven in effect prior to the publication of the specific commodity rates over the all-rail routes. As a result of these changes the sixth-class rates of 23.1 cents now apply from all producing points in Massachusetts and Connecticut. As the present rates represent increases subsequent to January 1, 1910, the burden rests upon the defendants to justify them. The complainants are satisfied with the increases made following the *Five Per Cent Case, supra*. They still have the benefit of the 21.1-cent rail-and-water rate from Boston & Albany points, which is 2 cents lower than the all-rail rate. Fertilizer ingredients now move under sixth-class rates from points throughout official classification territory to Norfolk, Va., and other consuming points in the east.

Scrap waste leather is the only commodity in issue that moves in substantial volume. It is stated to be worth \$7 or \$8 per ton. Although scrap leather, under the official classification rating, includes scrap waste leather, the former is used in the manufacture of different parts of shoes, such as tongues, and is more valuable than scrap waste leather, which can not be used for the same purposes. Scrap waste leather is a source of supply of ammonia which is used in the manufacture of commercial fertilizer. It is also used by New England and Canadian manufacturers of leather board. The sixth-class rates apply to points at which these manufacturers are located. Complainants draw their supply of waste and scrap materials from various points in New England territory, as well as from points in trunk line and central freight association territories.

In 1913, which is taken as a representative year because since that time complainants' business has been subnormal, due, it is stated,



to the European war, one complainant received about 4,200 tons of scrap waste leather from New England territory and the other about 7,800 tons. They also receive large quantities of this material from other territories mentioned. From New England territory complainants' principal tonnage formerly moved all rail. They are now shipping over the rail-and-water route whenever possible in order to secure the benefit of the 2-cent differential.

Comparisons were submitted for complainants to show that, distances considered, the rate assailed is higher than the rates to Norfolk from various points in New York, Ohio, Indiana, Illinois, and Michigan. An exhibit filed includes the rate of 23.1 cents to Norfolk from points in Connecticut and Massachusetts ranging from 390 miles at Stamford, Conn., earning 11.8 mills per ton-mile, to 619 miles at Amesbury, Mass., earning 7.5 mills; and from points in trunk line and central freight association territories ranging from 19.7 cents for 360 miles from Yonkers, N. Y., earning 10.9 mills, to 23.3 cents for 1,090 miles from Manistee, Mich., earning 4.27 mills. The sixth-class rate of 23.1 cents from Connecticut and Massachusetts points is blanketed over the shoe-manufacturing region, whereas the sixth-class rates from the points named in trunk line and central freight association territories are the result of the Norfolk's adjustment in relation to the Chicago-New York percentage scale. It appears that the rates from New England are upon a somewhat higher basis than the rates from central freight association territory, but this fact of itself does not establish the unreasonableness of the former. There is no specific allegation of undue prejudice as between points of origin.

Further comparisons are made for complainants between the rates attacked and the commodity rates from Norfolk to Boston and other New England points on lumber, castor pumice, cotton factory sweepings, refuse from cotton mills, cottonseed meal, hulls, and cake, old bagging, and tallow grease. These comparisons of rates on altogether different commodities in the opposite direction are of little value.

The rail carriers' principal justification rests upon the fact that the present rates mark the return to a sixth-class basis, which is now uniform throughout official classification territory. It is contended that by canceling the commodity rates from Massachusetts and Connecticut points the carriers have eliminated the discrimination which had existed in favor of Norfolk, the only destination which enjoyed rates lower than sixth class. The New England lines have always moved the scrap waste leather to the leather board manufacturers at their local sixth-class rates. During the period when the commodity rates of 18 cents or 18.9 cents were in effect to Norfolk the rates to



Newark, Camden, and Carteret, N. J., were 15.5 cents, or one-half cent higher than sixth class; and Wilmington, Del., was on the same basis. The sixth-class rates now apply to all of these points.

The Merchants & Miners considers the former rates unremunerative. It was stated on its behalf that it has always protested against their maintenance; that they were published simply to meet the competition of the rail carriers; and that it would prefer withdrawing from the traffic rather than to restore them. Also that complainants' shipments are poorly prepared for transportation, and that from a stevedoring standpoint these refuse materials are more expensive and troublesome to handle than ordinary freight. Out of its divisions of the rates it must pay a transfer charge of 3 cents at Boston; also a cost of approximately \$2.50 for loading the cars at Norfolk piers and a switching charge of \$6.50 per car from the piers to complainants' plants.

We find that the rates assailed have been justified. An order dismissing the complaint will be entered.

COMMISSIONERS AITCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.

47 I. C. C.

No. 8656.  
THOS. McFARLAND LUMBER COMPANY  
v.  
BUTLER COUNTY RAILROAD COMPANY ET AL.

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*Submitted October 24, 1916. Decided November 21, 1917.*

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Charges on lumber, in carloads, from Platanus, Mo., to Cairo, Ill., found to have been unreasonable. Reparation awarded.

*Ray Williams* for complainant.

*W. N. Barron* for Butler County Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Cairo, Ill. By complaint, filed February 16, 1916, it alleges that the rate of 15.5 cents per 100 pounds charged on a carload of lumber shipped from Platanus, Mo., to Cairo, July 21, 1913, was unreasonable to the extent that it exceeded 10 cents per 100 pounds, the rate in effect prior and subsequent to the movement of the shipment. Reparation is asked. The claim was presented to the Commission informally October 12, 1914. Rates are stated in cents per 100 pounds.

The shipment weighed 60,200 pounds and moved over defendants' lines through Poplar Bluff, Mo. Charges were collected in the sum of \$93.31. At the time of movement there was no published rate for the transportation of lumber from and to the points in question, and it therefore becomes necessary to determine what would have been a reasonable charge for the through service rendered. *Memphis Freight Bureau v. K. C. S. Ry. Co.*, 17 I. C. C., 90.

Prior to the time the shipment moved defendants maintained a joint rate of 10 cents on lumber, in carloads, from Platanus to Cairo, over the route of movement, which rate was canceled on July 15, 1913. Effective August 6, 1913, the 10-cent rate was reestablished and is still in effect.

We find that the charges collected were unreasonable to the extent that they exceeded charges that would have accrued at a rate of 10 cents per 100 pounds, which rate we find would have been reasonable; that complainant made the shipment as described and paid and bore charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have ac-

crued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$33.11, with interest.

An order awarding reparation will be entered, but as the 10-cent rate has been in effect for more than two years no order for the future is necessary.

COMMISSIONERS AITCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.

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No. 9473.

KERR BLEACHING & FINISHING WORKS

v.

OLD DOMINION STEAMSHIP COMPANY ET AL.

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*Submitted May 8, 1917. Decided November 21, 1917.*

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Charges on talc in carloads from New York, N. Y., to Concord, N. C., found to have been unreasonable and unduly prejudicial. Reparation awarded.

*A. S. Browne* for complainant.

*B. G. Brown* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in bleaching and finishing cotton cloth at Concord, N. C. By complaint, filed January 13, 1917, it alleges that the rate of 36 cents per 100 pounds charged by defendants on 11 carloads of talc shipped from New York, N. Y., to Concord, between April 6, 1914, and July 27, 1915, both dates inclusive, was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded a subsequently established rate of 28½ cents. A violation of the long-and-short-haul rule of the fourth section is also alleged. Reparation is asked. Claims covering apparently all the shipments were presented to the Commission within the statutory period. Rates are stated in cents per 100 pounds.

The shipments moved over the water line of the Old Dominion Steamship Company to Norfolk, Va., and thence over the Southern Railway to destination. Charges were collected at the sixth-class rate of 36 cents, governed by the southern classification. On one of the shipments, which weighed 33,150 pounds, charges were based on

a minimum weight of 36,000 pounds. The minimum applicable at the time was 24,000 pounds, so that this shipment was overcharged \$10.26. There was contemporaneously in effect on like traffic from New York to Greenville, S. C., where complainant's competitor is located, a commodity rate of 28 $\frac{3}{4}$  cents. Concord is intermediate to Greenville over the route of movement. This departure from the fourth section was protected by an appropriate application. Effective October 25, 1915, the 28 $\frac{3}{4}$ -cent rate was established to Concord, thus correcting the fourth section departure.

For defendants it is asserted that the rate charged was not unreasonable, but it is admitted that it was unduly prejudicial to the extent that it exceeded the rate contemporaneously in effect to Greenville.

The present rate is satisfactory to complainant.

We are of opinion and find that under all the circumstances the rate assailed was unreasonable and was unduly prejudicial to complainant to the extent that it exceeded the rate contemporaneously in effect to Greenville; that the complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it was damaged thereby; and that it is entitled to reparation in the sum of \$314.79, the difference between the amount paid by it and the amount that would have been paid under the rate found reasonable, including the overcharge mentioned.

An order awarding reparation will be entered.

COMMISSIONERS WOOLLEY and ANDERSON did not participate in the disposition of this case.

47 I. C. C.

No. 8072.  
BEALL & COMPANY ET AL.  
v.  
OREGON-WASHINGTON RAILROAD & NAVIGATION  
COMPANY ET AL.

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*Submitted May 29, 1917. Decided November 21, 1917.*

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Former finding that the charges on a tar-heating tank from Frankfort, N. Y., to Portland, Oreg., were legally applicable and not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial, affirmed on rehearing. Complaint dismissed.

*Wm. C. McCulloch* for complainant.  
*Blaine Hallack* for defendants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In our original report, 41 I. C. C., 627, we found that the charges on a tar-heating tank, shipped March 13, 1914, from Frankfort, N. Y., to Portland, Oreg., at a rate of \$5.55 per 100 pounds, or one and one-half times first class, were legally applicable and not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial. On February 20, 1917, the case was reopened, at complainant's request, for further hearing. A description of the article and the condition in which it was shipped, the item of the contemporaneous western classification under which the rate assailed was applied, and the present classification description and rating appear in the former report.

Upon a careful consideration of the entire record as now made we are still of the opinion and find that defendants applied the proper rating, and that complainant's evidence, including an inadequate comparison with other articles rated first class and alleged to be analogous from a transportation standpoint, falls short of proof that the rating and rate applied were unreasonable or otherwise in contravention of the act.

An order dismissing the complaint will be entered.

COMMISSIONERS ATTCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.

No. 9399.<sup>1</sup>

FARMERS' ELEVATOR COMPANY OF VERMILION, S. DAK.,  
v.  
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

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*Submitted October 23, 1917. Decided November 28, 1917.*

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Upon complaints that the defendant unjustly discriminated against complainants in favor of their competitors in the distribution of available cars for shipments of grain to various interstate markets from Vermilion, Burbank, Canton, Howard, Jefferson, and Dell Rapids, S. Dak., during the fall and winter of 1916-17; *Held*, That the distribution of cars by rotation unduly prejudiced complainants and unduly preferred their competitors. Defendant required to publish and observe reasonable car distribution rules.

*Payne & Olson* for Farmers' Elevator Company of Vermilion.

*O. E. Sweet, P. W. Daugherty, J. J. Murphy, and F. W. Mills* for Board of Railroad Commissioners of South Dakota in behalf of all complainants.

*C. M. Stillwell* for J. J. Mullaney, M. D. Thompson, and McCaull-Webster Elevator Company; and *C. B. Carlson* for Hunting Elevator Company, W. C. Gemmill, and J. A. Carpenter, interveners.

*Porter & Grantham* for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MOCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner*:

The above cases present the same issues, were consolidated at the hearing, and will be disposed of in one report.

Complainants own and operate grain elevators at Vermilion, Burbank, Jefferson, Canton, Howard, and Dell Rapids, S. Dak. It is alleged in the complaints, in substance and effect, that the defendant has failed to furnish sufficient cars to enable complainants to buy grain and ship it to interstate markets in the usual and ordinary volume; that the amount of shipments tendered the defendant by complainants has at all times been from 50 to 60 per cent of the

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<sup>1</sup> This report also embraces No. 9399 (Sub-No. 1), Farmers' Elevator Company of Jefferson, S. Dak., v. Chicago, Milwaukee & St. Paul Railway Company; No. 9413, Farmers' Elevator Company of Canton, S. Dak., v. Chicago, Milwaukee & St. Paul Railway Company; No. 9413 (Sub-No. 1), Farmers' Elevator Company of Howard, S. Dak., v. Chicago, Milwaukee & St. Paul Railway Company; and No. 9413 (Sub-No. 2), Farmers' Grain Company of Dell Rapids, S. Dak., v. Chicago, Milwaukee & St. Paul Railway Company.



entire shipments handled at each station at which they do business; that because thereof they are entitled to a distribution of available cars on the basis of the volume of business transacted, or the quantity of grain constantly on hand in their elevators and tendered to defendant for transportation; and that the defendant has unjustly discriminated against complainants in favor of their competitors at the stations named, in the manner in which its cars have been distributed. The prayer of complainants is that the defendant be required to cease and desist from the alleged unjust discrimination, and to furnish complainants cars for shipments of grain based on the volume of their business, and shipments in previous years, as compared with their competitors.

Under the laws of the state of South Dakota when a complaint that involves interstate traffic is filed or lodged with the state board of railroad commissioners, it becomes the duty of that commission to file the complaint with the Interstate Commerce Commission, and to prosecute the case at the expense of the state. That procedure was followed in this case. The Farmers' Elevator Company of Vermilion was also represented by its own attorneys.

The McCaull-Webster Elevator Company, J. J. Mullaney, and M. D. Thompson, grain dealers at Vermilion; and the Hunting Elevator Company, W. C. Gemmill, and J. A. Carpenter, grain dealers at Canton, intervened.

The Farmers' Elevator Company of Vermilion is a corporation, the stockholders of which are practically all farmers engaged in the business of producing grain, principally wheat, oats, and corn. The corporation owns and operates an elevator at Vermilion and one at Burbank. There are about 300 farmers who are stockholders in the corporation. They prefer to sell their grain to the company in which they are interested, as they share in the profits of the business, which is conducted in the same manner as private grain buying and selling concerns. That is to say, the grain is bought at the market price and sold to the best advantage. The farmers' elevator companies at Canton, Jefferson, and Howard are each separate corporations, but are organized in the same way and for the same purpose as the company at Vermilion. The Farmers' Grain Company at Dell Rapids is a similar corporation. The different corporations have no business connection with each other.

The capacity in bushels and the ownership of each elevator located at stations where complainants are engaged in business is shown in the following tables:

	Capacity.		Capacity.
<b>Vermilion:</b>		<b>Howard:</b>	
Farmers' Elevator Company.....	35,000	Farmers' Elevator Company No. 1..	15,000
McCaull-Webster Elevator Company	33,000	Farmers' Elevator Company No. 2..	25,000
J. J. Mullaney.....	12,000	William Sheedy.....	20,000
Thompson & Lewis.....	25,000	W. C. Boorman.....	20,000
<b>Burbank:</b>		D. Theophilus.....	20,000
Farmers' Elevator Company.....	25,000	L. E. Brewer.....	20,000
McCaull-Webster Elevator Company	30,000	<b>Dell Rapids:</b>	
<b>Canton:</b>		Farmers' Grain Company.....	40,000
Farmers' Elevator Company No. 1..	18,000	W. C. Milne.....	30,000
Farmers' Elevator Company No. 2..	18,000	A. B. Gillette.....	30,000
Hunting Elevator Company.....	15,000	McCaull-Webster Elevator Company	20,000
W. C. Gemmill.....	18,000	Fields-Slaughter Elevator Company.	15,000
J. A. Carpenter.....	18,000		
<b>Jefferson:</b>			
Farmers' Elevator Company No. 1..	35,000		
Farmers' Elevator Company No. 2..	10,000		
Tiedeman Elevator Company.....	35,000		

From exhibits on file, it is shown that for the years 1913, 1914, 1915, and 1916 the Farmers' Elevator Company handled 48.80 per cent of the total amount of grain shipped from Vermilion; 52.13 per cent from Burbank; and 48.96 per cent from Canton. The Farmers' Grain Company for the four years handled 60.42 per cent of all the grain shipped from Dell Rapids. The Farmers' Elevator Company did not begin shipping from Howard until 1915. In that year it handled 49.39 per cent of the total shipments of grain, and in 1916, 51.38 per cent.

An unprecedented grain-car shortage existed on the lines of the defendant in South Dakota during the fall and winter of 1916-17. This was in common with the severe car shortage existing all over the country. It is not contended, nor shown in this proceeding, that any of the stations named by complainants did not receive their full proportion of available cars. Complainants' evidence is directed to the alleged unjust discrimination in the distribution of cars that were furnished.

In the case of grain-car shortages, which occur practically every year during the rush period of shipment, the defendant for many years has distributed available cars in accordance with what is known as rule No. 584, as follows:

There must be no discrimination in favor of any shipper. Cars must be furnished in proportion to the amount of freight ready to ship. For example: If one shipper has 5 carloads ready to ship, another has 4, and another has 1, making a total of 10, the first must be assigned five-tenths of the cars on hand, the second four-tenths, and the third one-tenth. The applications of one day must be filled before those of another day are supplied. Applications must not be entered unless the applicant has the freight on hand ready to ship.

Farmers who wish to ship their own grain must be furnished cars in the same proportion as other shippers. This proportion must be based on the amount of grain conveniently located for prompt loading. By prompt loading is meant that a car set in before 10 o'clock a. m. must be loaded ready to go out by 6 o'clock p. m. of the same day.

Cars must not be furnished to track buyers who have not on hand full carloads stored convenient for prompt loading. Agent must keep a daily record showing:

1. Name of applicant.
2. Amount ready to ship.
3. Time of application.
4. Cars assigned.

Defendant's representatives testified that the above rule is the standard rule in times of ordinary car shortage. It is an operating rule, not published or filed with the Commission. It is directory rather than mandatory and was made to govern local agents in ordinary cases, but these agents are clothed with discretion to see to it that cars are distributed at their stations without discrimination. In view of the extraordinary conditions of car shortage that existed in November, 1916, and continued until the middle of March, 1917, the rule was set aside and cars were distributed to grain shippers at any given station in rotation. The result is that since November 17, 1916, each shipper of grain from each station of the defendant in South Dakota received an equal share of the cars allotted.

Complainants contend that the method of car distribution which gives each shipper the same number of cars enables them to do the same amount of business, without regard to the volume of shipments made in ordinary times, and without regard to the ability of a shipper to buy and sell grain. It is further contended that equality among shippers means opportunity to conduct business in the customary manner as regards volume or purchases and sales; that business done by shippers in normal times, as shown by experience for a period of years, is the only proper test to be applied to distribution of cars in any period of shortage; and that a rule framed on such bases would permit each shipper to do the same proportionate amount of business during car shortages as had been done by him previously.

As heretofore shown, at Canton, Jefferson, and Howard each complainant owns and operates two elevators. It is asserted by complainants at these points that, if in case of a serious shortage cars are to be rotated in accordance with the number of shippers at a given station, without reference to the number of elevators owned by each shipper, or the volume of shipments in previous years, then the amount of business that shall be transacted by any grain company will be controlled by the method adopted by the carrier in the distribution of its cars, and not, as it should be, by each shipper's elevator capacity, the number of the company's stockholders, the number of its regular patrons, and its popularity and ability to get and hold business.

The interveners insist that in times of car shortage the only just rule is to give each shipper from a station a car in turn. It is shown

by them that if any grain shipper in the state of South Dakota had any business at all in the fall and winter of 1916-17, his elevator was full of grain practically all the time; that the grain dealers of the state everywhere were unable to buy all the grain offered to them by their own customers; that no shipper could buy more grain than would replace that shipped out; that one day a shipper might be able to buy a carload, and the next day he could not buy a bushel, because he had no place to put it; that this was the situation at each station on the lines of defendant in South Dakota; and that, generally, there was one elevator at each station that had some room for grain to replace what had been shipped outbound. It is shown that each of the grain shippers at Vermilion and Canton could at any time after December 1, 1916, have filled and shipped all the cars that defendant allotted to those stations. One of the interveners, a shipper at Canton, testified that he made a complaint to the officers of the defendant previous to November, 1916, that its distribution of a larger number of cars to the Farmers' Elevator Company than to his company, was, under the circumstances, unjust discrimination against his company. It is asserted by the interveners that in times of severe car shortage in any year it has been the practice of local agents to distribute available cars in rotation, in order to give each shipper an opportunity to do some business.

Defendant's representatives testified that they were advised in November, 1916, by operatives at Canton and Vermilion, and various other stations in South Dakota, that their elevators were full of grain; that the purpose of making a distribution of available cars during the severe shortage was to relieve congested elevators; that in ordinary times of shortage, cars were distributed in accordance with rule 584; that the matter of car distribution at all stations, however, is left largely to the discretion of the local agent, who is on the ground and knows all of the circumstances and conditions with respect to different shippers; that all stations in the state of South Dakota were short of cars in the fall of 1916; and that the equal distribution of cars was apparently satisfactory to the majority of shippers, because no complaints had been received, except those involved in this proceeding.

A division freight and passenger agent of defendant, having jurisdiction over the station of Canton, testified that about the first of the year 1917 the local agent at Canton advised him that there was dissatisfaction on the part of elevator owners with respect to the distribution of cars for shipments of grain at his station; that he wrote the agent that the only way to be fair to all grain shippers was to give each a car in turn in view of the stringent car shortage; that the agent called his attention to a contention of the Farmers' Elevator

Company that as it has two elevators in Canton it was entitled to a car for each elevator; and that he advised the agent the Farmers' Elevator Company was but one shipper, and its two elevators should be considered as one. It is the opinion of this witness that if defendant distributed cars in any other manner than equally it would cause the smaller shipper to suffer during times of severe car shortage.

A division superintendent of defendant testified that rule 584 is based on the ability of the shipper of grain to make shipments; that the rule constitutes the instructions furnished local agents; that as a general thing when a question of car distribution is raised the agent's attention is called to the rule; that in times of ordinary car shortage the rule is satisfactory to a majority of grain shippers; and that in the emergency beginning November 17, 1916, defendant desired to adopt some method of car distribution that would operate without discrimination against any shipper.

The elevator of the Farmers Elevator Company at Vermilion was filled with grain on November 17, 1916. All of the elevators of its competitors at the same station were not filled until December 10, 1916. Although complainant tendered grain to the defendant for shipment from November 17 to December 10 in much larger quantities than any other shipper in Vermilion during that time, cars were distributed by rotation and complainant received cars in no larger proportion than other shippers. Complainant contends that consequently its competitors were able to buy grain in large quantities before their elevators were filled, which they might otherwise have been unable to purchase, and that much of this grain came from regular customers of the complainant and from its stockholders. It is evident that to distribute cars by rotation when the elevators of only one shipper are filled gives an undue preference to his competitors. However, even after the elevators of its competitors were filled the Farmers Elevator Company was unduly prejudiced by reason of the method pursued in distributing cars at Vermilion, and so also were the other complainants, located at the other stations indicated, during the entire period during which cars were distributed in rotation. This is evident from the fact that after all of the elevators at Vermilion and the other points were filled each shipper did the same amount of business, although complainants at all stations but one tendered larger amounts of grain for shipment than their competitors.

So far as this record shows, the practice of furnishing cars in accordance with rule 584 is generally satisfactory to grain shippers during car shortage periods. The rule is framed with the general view of distributing cars during periods of car shortage in the relative proportions in which different shippers tender grain for shipment, such grain being actually on hand and conveniently located for prompt loading.



This we believe is fair and should be followed during the entire period of car shortage. With all of their elevators filled shippers would probably offer all of their grain for shipment in order to secure the greatest possible share of available equipment. In that event shippers with the largest storage capacity will be given the largest proportion of available cars provided they offer all of their grain for shipment, which, however, will not constitute undue preference. Thus, for instance, the Farmers' Elevator Company, with two elevators at Canton of a combined capacity of 36,000 bushels, as compared with a combined capacity of elevators owned by its competitors at the same point of 51,000 bushels, would receive 41.4 per cent of the available car supply at that station, instead of 25 per cent, as under the rotation plan.

There is one feature of rule 584 which does not meet with our approval. It is provided that "the applications of one day must be filled before those of another day are supplied." Under this provision a shipper who offers only one carload of grain for shipment on a day when his competitor offers 20 carloads could not secure additional cars until his competitor had been supplied with the full number applied for, even though it might take the carrier a considerable time to furnish such cars. The rule should be so revised as to provide for a new distribution each day in accordance with the grain offered for shipment for that date, except that in case the share of any shipper for any particular day is a fraction of a car, and he is consequently furnished no cars, this fraction should be carried over to subsequent days until under his accumulated allotments he is furnished a car. The latter provision is necessary so as to take care of the small shippers whose share under the rule may be less than a car for successive days and who might otherwise be furnished no cars. It will be reasonable, however, to provide that no additional cars will be allotted a shipper until cars furnished on previous days are loaded.

This disposition does not comply with complainant's request that cars should be apportioned in times of shortage according to past performances in shipments tendered by individual shippers, or elevators, over a given period. From the record in this case it does not appear that the distribution of cars to grain shippers should be upon this basis. The supply of grain to a dealer is dependent upon the sale of grain to him by farmers and may be cut off in whole or in part by his competitors. The various grain dealers located at a given station draw grain from the same source, namely, the farmers located in the surrounding country. It is entirely fair to distribute the largest share of the available cars to the dealer with the largest amount of grain on hand ready for shipment, even though he might not during normal periods have controlled the larger volume of grain



shipped from the point at which he is located, for his elevator must be regarded as a part of the facilities necessary in the transportation of grain, and in so far as he has provided himself with superior facilities he is entitled to whatever advantage he may secure thereby.

In *Railroad Commission of Iowa v. C., R. I. & P. Ry. Co.*, 29 I. C. C., 396, we refused to require carriers to discontinue their general practice of distributing cars to grain dealers "according to demand and the grain ready for shipment," and instead distribute cars in accordance with the past performance of shippers. However, in that case we permitted carriers to leave the method of distributing cars largely to the discretion of their local agents. The record in the instant case shows that this discretion when exercised by the local agents leads to unjust discrimination and it appears unwise to leave this matter to their discretion. Just and reasonable rules should be devised for their guidance. Situations may arise where it is necessary to move grain from a particular elevator to avoid its deterioration, as for instance where corn becomes heated or where an elevator has been damaged by fire or storm and as a consequence the grain is exposed to the elements. It should be within the discretion of carriers' officials to meet such emergencies and in the measure necessary deviate from their car distribution rules. But only in the event of emergencies such as these should the rules be departed from and then, of course, only subject to complaint as to the reasonableness and justice of the action taken.

The defendant will be expected to publish and file with this Commission on or before March 1, 1918, a rule in harmony with our findings in this case to be followed during periods of car shortage in distributing cars to grain shippers located on its line.

47 I. C. C.

No. 8873.  
TUSCALOOSA BOARD OF TRADE  
v.  
ALABAMA GREAT SOUTHERN RAILROAD COMPANY  
ET AL.

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*Submitted May 1, 1917. Decided December 3, 1917.*

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Upon complaint of undue prejudice and disadvantage to Tuscaloosa, Ala., in the class and commodity rate adjustment from Ohio River crossings, St. Louis, Mo., Memphis, Tenn., and other lower Mississippi River crossings and from points beyond, from Gulf, south Atlantic, and Virginia ports, from eastern cities and interior eastern points, and from Buffalo-Pittsburgh territory to Tuscaloosa, Birmingham, Montgomery, and Selma, Ala.; *Held*, That the disparities in the rates to the points named do not effect unlawful prejudice or disadvantage to Tuscaloosa. Complaint dismissed.

*Wimbish & Ellis*, by *William A. Wimbish*, and *M. M. Caskie* for complainant.

*R. Walton Moore* and *Charles J. Rixey, jr.*, for Alabama Great Southern Railroad Company, Mobile & Ohio Railroad Company and others; *Nelson W. Proctor* for Louisville & Nashville Railroad Company; *S. R. Prince* for Mobile & Ohio Railroad Company; and *Robert N. Nash* for St. Louis & San Francisco Railroad Company.

*C. W. Hayward* for Meridian, Miss., Traffic Bureau, intervener.

REPORT OF THE COMMISSION.

**DANIELS, Commissioner:**

This is a complaint brought by the Board of Trade of Tuscaloosa, Ala., alleging that defendants' class and commodity rates to Tuscaloosa from Ohio River crossings, St. Louis, Mo., Memphis, Tenn., and other lower Mississippi River crossings and from points beyond, from Gulf ports, south Atlantic ports, and Virginia port cities, from eastern cities and interior eastern points, all rail, and water and rail, and from Buffalo-Pittsburgh territory are unreasonable and unduly prejudicial against Tuscaloosa in favor of Birmingham, Montgomery, and Selma, Ala., and Meridian, Miss. There is a prayer for the establishment of joint through rates from Cleveland-Detroit territory in lieu of existing combinations on the Ohio River, and for the establishment of through routes and joint rates from eastern port cities and interior eastern points, Norfolk, Va., and south Atlantic coast points through the port of Mobile, Ala. In addition, because of

changes in conditions of transportation by water since the fourth section hearings were concluded, we are asked to reconsider and modify the report and order in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and 32 I. C. C., 61, to authorize further departures from the long-and-short-haul rule of the fourth section in connection with rates to Tuscaloosa.

By amendment to the original complaint reparation is asked on behalf of certain of complainant's members on all shipments made within two years prior to the filing of the complaint.

There were assigned for hearing with the complaint those portions of Fourth Section Applications Nos. 542, 1952, and 2138, respectively, filed by the Alabama Great Southern, Louisville & Nashville, and Mobile & Ohio railroads, by which authority is sought to continue to charge lower class and commodity rates from certain of the points of origin specified in the complaint to Tuscaloosa than are contemporaneously maintained on like traffic to intermediate points. As to each of these applications, the interested carriers testified that there are no existing fourth section departures except at points where specific relief has been granted or where there is a circuitous line to the extent of 115 per cent or more of the direct short line.

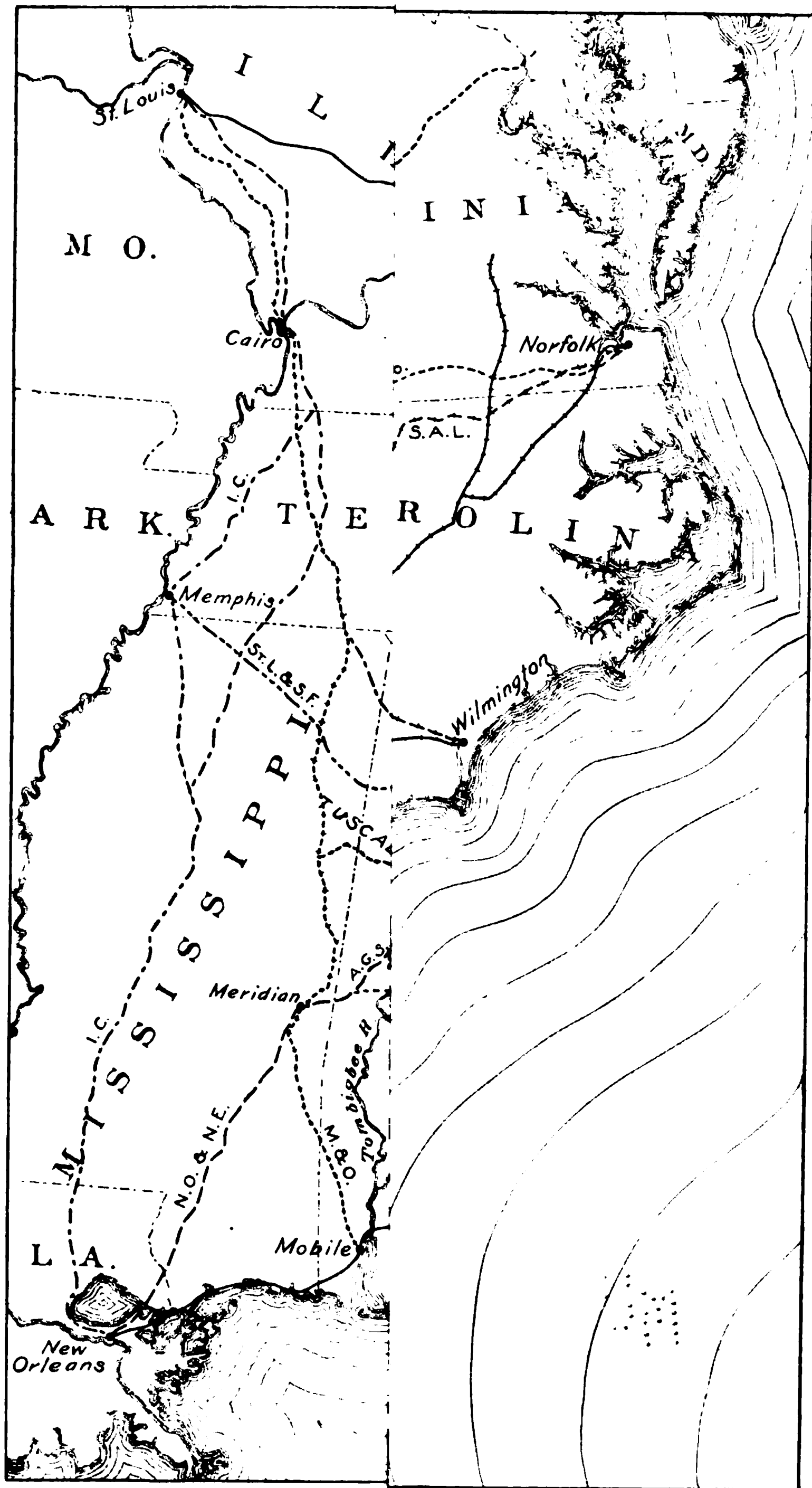
Penick & Ford, Limited, Dunbar Molasses & Syrup Company, New Orleans Coffee Company, Limited, and Leon Godchaux Company, Limited, of New Orleans, La., and Meridian Traffic Bureau, of Meridian, intervened, but only the last named appeared at the hearing and participated therein.

As the measure of the southeastern rates generally is now under consideration in *Southeastern Rate Adjustment*, Docket No. 9516, pending, and as complainant, on hearing and in brief, without formal abandonment of the charge of unreasonableness, admitted that the matter of undue prejudice covered the gravamen of the complaint, the issue of alleged unreasonableness will not be dealt with in this report.

The prayer for joint rates from Cleveland-Detroit territory and for through routes and joint rates via the port of Mobile is not supported by affirmative evidence demonstrating its necessity, or by showing of injury to complainant or to Tuscaloosa resulting from the prevailing combination rates. We therefore are not warranted in granting the prayers in these respects.

The allegation of undue prejudice against Tuscaloosa in favor of Meridian was also abandoned on hearing, leaving for determination the sole issue whether the existing adjustment effects unlawful prejudice against, or disadvantage to, Tuscaloosa, with corresponding preference of, or advantage to, Birmingham, Montgomery, or Selma.

The accompanying outline map illustrates the situation.





Tuscaloosa is in the central part of western Alabama, by rail 56 miles southwest of Birmingham, 105 miles northwest of Montgomery, and 89 miles northwest of Selma. It is served by the Alabama Great Southern, Mobile & Ohio, and Louisville & Nashville railroads, and is also on the Warrior River, a tributary of the Tombigbee River, the distance by water from Mobile being about 360 miles. Complainant treats the Alabama Great Southern and the Southern Railway as one, and throughout the case deals with single-line hauls where these lines form the route, but whatever be the community of interest in their financial or other relations the Alabama Great Southern and Southern Railway are not shown to be other than separately operated and managed lines. Including the suburbs of Holt, Kaulton, and Northport, all of which are without its corporate boundaries, Tuscaloosa has an estimated population of 19,457 and does an annual commercial and industrial business estimated at \$25,000,000. Exclusive of the suburbs named, its population by census of 1910 was 8,407. It is near large deposits of coal, iron ore, and limestone, and adjacent to a fertile agricultural section and large tracts of timber.

Birmingham is the seat of extensive mining, manufacturing, and jobbing interests. Its population by the census of 1910 was 166,154. It is not on a navigable stream, but is reached from different directions by many important rail carriers; by the Alabama Great Southern and its connections; the Illinois Central; the Louisville & Nashville; the Mobile & Ohio; and the St. Louis-San Francisco; and from the east by the Southern Railway, the Seaboard Air Line, the Central of Georgia, and the Atlanta, Birmingham & Atlantic.

Montgomery and Selma, in southern Alabama, distant by rail from Mobile 178 miles and 162 miles, respectively, are on the Alabama River, which affords through transportation, particularly from the west. In 1910 Montgomery had a population of 38,136, and Selma of 13,647.

Montgomery is served from the west by the Louisville & Nashville, the Mobile & Ohio, and the Western of Alabama in connection with the Southern Railway; from the east by the Seaboard Air Line, Atlantic Coast Line, Central of Georgia, and Western of Alabama. Selma is reached from the east by the Western of Alabama and the Southern Railway, and from the west by the Louisville & Nashville and Southern Railway.

#### RATE STRUCTURE.

With some exceptions the present class-rate adjustment became effective on January 1, 1916. Many of the commodity rates were also realigned at that time, others following at later dates, and the

47 I. C. C.



whole present structure may be said to be a part of the general readjustment of rates to the southeast made in pursuance of our report and orders in *Fourth Section Violations in the Southeast, supra*.

Tuscaloosa is not specifically dealt with in *Fourth Section Violations in the Southeast*, except for the relief granted via water and rail from the east, and the carriers are not now asking for additional relief to that point. To Montgomery and Selma also relief was granted from the east. We said, at page 291 of *Fourth Section Violations in the Southeast*:

The rates from the Ohio River crossings to Montgomery and Selma have been depressed through the combined influence of water, rail, and market competition. The primary cause, however, for the present level of rates from the Ohio River cities to these points is the water competition on the Alabama River. The low rates from the Ohio River to Mobile and the water rates from Mobile to Montgomery and Selma produce totals that can not be greatly exceeded by the direct all-rail lines. The class rates from the Ohio River to both Montgomery and Selma are slightly less than the combination rates that can be obtained by adding the rates to Mobile to the water rates from Mobile to these points. There are approximately 350 special commodity rates from the Ohio River cities and St. Louis to these points. Of these commodity rates approximately 10 per cent are in excess of the combination rates made by taking rail rates to Mobile and adding thereto the water rates to Montgomery.

As the rates now stand the testimony is fairly convincing that they represent practically all that the carriers can get out of the traffic, and that any material increase in these rates would have the effect of diverting a substantial amount of traffic from the rail lines.

Relief was granted from the west, but was denied from New Orleans.

At pages 306 and 307 of the same report we said, with respect to the rates to Birmingham:

The different roads south of the Ohio and east of the Mississippi rivers are engaged in an active rivalry for the carriage of freight to Birmingham. \* \* \* These carriers from the west and from the east come into competition at Birmingham. Only so much of the necessities of life and commerce can be consumed in this territory. The rates made to Birmingham by the western carriers from the centers of production served by them are relatively low. This is due partly to the competition of these western carriers one with another, and partly to the desire of certain carriers serving Birmingham and whose principal interest is in that point to keep the rates to Birmingham so adjusted as to permit the distribution of merchandise from that point in competition with Montgomery. These low rates from the west have induced the eastern carriers to depress their rates from the east to some extent in order to secure some of the traffic to that point. The present rates from New York to Birmingham exceed the rates from Cincinnati to that point by 25, 19, 18, 18, 13, 13 cents per 100 pounds on classes 1 to 6. The highest rated intermediate point between Atlanta and Birmingham is represented by Austell, Ga. The rates from New York to this point exceed the rates from Cincinnati and Louisville by 7, 3, 0, 2, 1, 1 cents per 100 pounds on classes 1 to 6. It is clear that the carriers from

the east have more nearly met the competition from the Ohio River cities at these higher rated intermediate points than they have done at Birmingham. We are of the opinion that the competition of the carriers reaching Birmingham from western markets of supply has been met consistently by the carriers from the east at Birmingham and at points intermediate thereto between Atlanta and Birmingham on the route here considered.

Relief was granted from the east and from New Orleans via the route of the Louisville & Nashville Railroad through Montgomery, but from the Ohio River relief was denied.

A study of the new rate structure indicates substantial compliance with the terms of the orders in *Fourth Section Violations in the Southeast*, and that the changes made have in most instances materially lessened the rate disparities previously existing against Tuscaloosa.

The accompanying table typifies the old and new class-rate situation, and shows the short-line distances from representative points of origin.

47 I. C. C.

## Statement of old and new class rates with short-line distances to Tuscaloosa, Birmingham, Montgomery, and Selma, Ala.

To Birmingham.												To Tuscaloosa.											
	Miles.	1	2	3	4	5	6	A	B	C	D	Miles.	1	2	3	4	5	6	A	B	C	D	
New York and Philadelphia:																							
All rail—																							
Rates prior to Jan. 1, 1916.....	1,084	180	130	111	91	76	65	56	61	53	47	1,028	126	108	95	81	66	54	41	33	48	44	
Rates effective Jan. 1, 1916.....	1,063	144	124	100	83	74	61	54	59	50	45	937	126	106	95	81	66	54	41	33	48	44	
Rail and water—																							
Rates prior to Jan. 1, 1916.....	1,893	138	120	102	83	70	58	51	56	47	42	.....	114	98	86	73	60	49	38	48	40	39	
Rates effective Jan. 1, 1916.....	1,863	132	114	100	81	69	56	49	54	45	40	.....	114	98	86	73	60	49	38	48	40	39	
Baltimore:																							
All rail—																							
Rates prior to Jan. 1, 1916.....	896	142	122	108	88	78	60	53	58	49	44	840	119	102	92	78	63	51	39	50	42	41	
Rates effective Jan. 1, 1916.....	866	136	117	103	87	71	58	50	51	40	43	.....	124	106	94	80	65	54	44	64	43	38	
Charlotte:																							
Rates prior to Jan. 1, 1916.....	894	136	117	103	87	71	58	50	51	40	43	877	107	92	83	70	57	46	34	45	37	33	
Rates effective Jan. 1, 1916.....	746	127	110	94	81	67	55	46	46	35	39	690	107	92	81	68	56	46	36	45	34	30	
Chicago:																							
Rates prior to Jan. 1, 1916.....	851	155	135	123	109	85	73	57	54	45	39	706	144	126	109	88	68	58	45	49	40	38	
Rates effective Jan. 1, 1916.....	832	119	103	90	76	63	53	44	45	35	33	476	93	80	71	60	49	41	33	41	37	33	
Cincinnati:																							
Rates prior to Jan. 1, 1916.....	444	119	103	90	76	63	53	44	45	35	33	427	93	80	71	60	49	41	33	41	37	33	
Rates effective Jan. 1, 1916.....	513	113	104	89	72	62	48	37	44	34	28	486	102	88	76	65	50	38	35	42	33	27	
Cleveland:																							
Rates prior to Jan. 1, 1916.....	537	118	104	89	72	62	48	37	44	34	28	479	99	84	74	63	51	40	32	36	29	24	
Rates effective Jan. 1, 1916.....	537	118	104	89	72	62	48	37	44	34	28	479	99	84	74	63	51	40	32	36	29	24	
Detroit:																							
Rates prior to Jan. 1, 1916.....	447	108	94	79	64	55	43	31	40	31	25	394	79	69	58	47	40	30	28	34	26	22	
Rates effective Jan. 1, 1916.....	447	108	94	79	64	55	43	31	40	31	25	394	79	69	58	47	40	30	28	34	26	22	
Memphis:																							
Rates prior to Jan. 1, 1916.....	387	108	94	79	64	55	43	31	40	31	25	394	79	69	58	47	40	30	28	34	26	22	
Rates effective Jan. 1, 1916.....	387	108	94	79	64	55	43	31	40	31	25	394	79	69	58	47	40	30	28	34	26	22	
Mobile:																							
Rates prior to Jan. 1, 1916.....	298	89	82	75	60	51	38	27	33	24	18	261	75	65	54	43	36	28	24	30	22	18	
Rates effective Jan. 1, 1916.....	298	89	82	75	60	51	38	27	33	24	18	261	75	65	54	43	36	28	24	30	22	18	
New Orleans:																							
Rates prior to Jan. 1, 1916.....	298	89	82	75	60	51	38	27	33	24	18	261	75	65	54	43	36	28	24	30	22	18	
Rates effective Jan. 1, 1916.....	298	89	82	75	60	51	38	27	33	24	18	261	75	65	54	43	36	28	24	30	22	18	

44100

From—	To Montgomery.										To Selma.											
	Miles.	1	2	3	4	5	6	A	B	C	D	Miles.	1	2	3	4	5	6	A	B	C	D
New York & Philadelphia:																						
All rail—																						
Rates prior to Jan. 1, 1916.	1,051	120	105	93	77	63	50	41	33	45	44	1,101	120	105	93	77	63	50	41	33	45	44
Rates effective Jan. 1, 1916.	900	131	112	99	85	69	57	46	37	45	41	1,010	131	112	99	85	69	57	46	37	45	41
Rail and water:																						
Rates prior to Jan. 1, 1916.		108	95	84	69	57	45	35	48	40	39		108	95	84	69	57	45	35	48	40	39
Rates effective Jan. 1, 1916.		119	102	90	77	63	52	41	32	40	38		119	102	90	77	63	52	41	32	40	38
Atlanta:																						
Rates prior to Jan. 1, 1916.	906	113	90	83	72	59	47	39	50	42	41	913	113	99	88	72	59	47	39	50	42	41
Rates effective Jan. 1, 1916.		124	106	94	80	66	54	44	54	45	38		124	106	94	80	66	54	44	54	45	38
Birmingham:																						
Rates prior to Jan. 1, 1916.	838	101	89	79	64	53	43	34	45	37	35	838	101	89	79	64	53	43	34	45	37	35
Rates effective Jan. 1, 1916.		112	96	85	72	59	49	39	49	39	33		112	96	85	72	59	49	39	49	39	33
St. Louis:																						
Rates prior to Jan. 1, 1916.	715	87	81	65	53	44	31	26	34	28	27	715	87	81	65	53	44	31	26	34	28	27
Rates effective Jan. 1, 1916.		107	92	81	68	56	46	35	45	34	30		107	92	81	68	56	46	35	45	34	30
Memphis:																						
Rates prior to Jan. 1, 1916.	591	129	117	96	74	61	53	39	45	40	36	591	129	117	96	74	61	53	39	45	40	36
Rates effective Jan. 1, 1916.		146	128	109	84	69	57	46	51	42	38		146	128	109	84	69	57	46	51	42	38
Charleston:																						
Rates prior to Jan. 1, 1916.	458	74	68	56	46	38	28	22	30	22	21	458	74	68	56	46	38	28	22	30	22	21
Rates effective Jan. 1, 1916.		93	80	71	60	48	41	38	41	27	23		93	80	71	60	48	41	38	41	27	23
Savannah:																						
Rates prior to Jan. 1, 1916.	338	74	68	56	46	38	28	22	30	22	21	338	74	68	56	46	38	28	22	30	22	21
Rates effective Jan. 1, 1916.		90	77	69	59	47	40	32	40	26	22		90	77	69	59	47	40	32	40	26	22
St. Louis:																						
Rates prior to Jan. 1, 1916.	582	121	106	95	74	60	49	35	42	33	27	582	121	106	95	74	60	49	35	42	33	27
Rates effective Jan. 1, 1916.		131	108	96	74	60	49	37	44	34	28		131	108	96	74	60	49	37	44	34	28
Cincinnati:																						
Rates prior to Jan. 1, 1916.	575	108	97	88	70	57	47	32	36	28	24	575	108	97	88	70	57	47	32	36	28	24
Rates effective Jan. 1, 1916.		108	97	88	70	57	47	32	36	28	24		108	97	88	70	57	47	32	36	28	24
Louisville:																						
Rates prior to Jan. 1, 1916.	400	98	87	78	62	50	41	28	34	26	22	400	98	87	78	62	50	41	28	34	26	22
Rates effective Jan. 1, 1916.		98	87	78	62	50	41	28	34	26	22		98	87	78	62	50	41	28	34	26	22
Chicago:																						
Rates prior to Jan. 1, 1916.	420	98	87	78	62	50	41	28	34	26	22	420	98	87	78	62	50	41	28	34	26	22
Rates effective Jan. 1, 1916.		98	87	78	62	50	41	28	34	26	22		98	87	78	62	50	41	28	34	26	22
Memphis:																						
Rates prior to Jan. 1, 1916.	338	94	88	74	58	46	37	24	30	22	19	338	94	88	74	58	46	37	24	30	22	19
Rates effective Jan. 1, 1916.		94	88	74	58	46	37	24	30	22	19		94	88	74	58	46	37	24	30	22	19
New Orleans:																						
Rates prior to Jan. 1, 1916.	318	89	77	65	42	35	28	24	30	22	18	318	89	77	65	42	35	28	24	30	22	18
Rates effective Jan. 1, 1916.		89	77	65	42	35	28	24	30	22	18		89	77	65	42	35	28	24	30	22	18

From New York.

From Philadelphia.

From Virginia cities.

Average from all Virginia cities.

\* Average from all Virginia cities.

\* From Philadelphia.

\* From New York.

It will be observed that to Tuscaloosa the short-line distances from the territories of origin as a whole, considering the length of the hauls, are not materially different from the short-line distances to Birmingham, Montgomery, or Selma. For example, as compared with Birmingham, Tuscaloosa's maximum advantage in distance is 56 miles and its maximum disadvantage 58 miles, Birmingham being less distant from all points except Memphis and New Orleans; as compared with Montgomery, Tuscaloosa's maximum advantage is 106 miles and its maximum disadvantage also 106 miles. As compared with Selma, its maximum advantage is 90 miles, its maximum disadvantage 56 miles. To the extent, therefore, that distance alone may be controlling, the contention that there should be an equality or an approximate equality of rates appears reasonable, but as will be noted hereafter distance has not been a controlling factor in the rate adjustment. On the contrary, in meeting what they conceived to be the requirements of the orders in *Fourth Section Violations in the Southeast*, the carriers effected an adjustment, observing rate relationships the history of which has been recited in many previous cases, notably in the report in *Fourth Section Violations in the Southeast*. These relationships may be briefly recounted, all rates cited being stated in cents per 100 pounds.

RATES FROM OHIO AND MISSISSIPPI RIVER CROSSINGS TO TUSCALOOSA,  
BIRMINGHAM, MONTGOMERY, AND SELMA.

Tuscaloosa, Birmingham, Montgomery, and Selma all lie in Montgomery subterritory of southeastern freight association territory. The rate structure to that subterritory from the Ohio River crossings, beginning with Louisville as the pivotal point, is as follows: Rates from Cincinnati are made to exceed rates from Louisville by amounts for each class termed the Montgomery differentials. These amounts are as follows:

Classes -----	1	2	3	4	5	6	A	B	C	D
Cents-----	10	10	10	8	7	6	4	2	2	2

From Evansville, Henderson, Paducah, and Cairo the rates are made the same as from Louisville. Formerly the Mobile & Ohio Railroad maintained from Cairo to Tuscaloosa rates on some of the classes which in amount were the lower Mississippi River points differentials under St. Louis, thus in some measure extending the Mississippi Valley adjustment to the southeast. The new rates, effective January 1, 1916, wipe out this exceptional basis and restore the Cairo rates to the established Louisville scale, resulting in total increases of 5, 2, 2, 5, 4, 4 cents for classes 1, 2, A, B, C, and D, the Louisville rates having been increased 2, 2, 1, 1 cents for classes A

to D, inclusive. The former exceptions from Cairo did not apply to Birmingham, Selma, and Montgomery, and the only increases to those points were those which were made from Ohio River crossings generally on classes A, B, C, and D, except that to Birmingham, which had theretofore enjoyed rates lower than Selma and Montgomery from the river crossings, increases were also made on the first six classes, beginning with 18 cents first class and ranging down to 10 cents sixth class. The increased rates from Birmingham conform to the relationship from the Ohio River crossings, Louisville being the pivotal point and Cincinnati being the long-established differentials thereover.

#### RATES FROM ST. LOUIS.

From St. Louis to Birmingham, Montgomery, and Selma the following differentials higher than from Evansville are observed:

Classes-----	1	2	3	4	5	6	A	B	C	D
Cents -----	23	19	17	12	10	8	7	8	7	5

Here Tuscaloosa has the advantage over Birmingham, Montgomery, and Selma in that its rates from St. Louis are made the same as from Cincinnati, or only the 10-cent scale of differentials higher than Evansville. This is due to the influence of the Mobile & Ohio Railroad with its direct line from St. Louis to Tuscaloosa, which insisted on carrying rates from St. Louis no higher than those from Cincinnati.

From Memphis the rates on all classes are uniformly 4 cents less than the rates from Louisville, except to Birmingham, where for reasons hereinafter stated the rates are on a scale beginning 10 cents first class down to 4 cents on classes A, B, C, and D less than the rates from Louisville.

#### RATES FROM NEW ORLEANS.

Rates from New Orleans to Birmingham were formerly made on the numbered classes the same as from Cincinnati, and on the lettered classes the same as from Memphis. The fluctuations in the Cincinnati and Memphis rates were not always strictly regarded, hence just prior to January 1, 1916, this exact relation did not exist. At present the Louisville basis applies from New Orleans to Birmingham, and the rates to Tuscaloosa are made the same as to Birmingham, as has been the case for many years. It does not appear that the rates from New Orleans to Montgomery and Selma are fixed with definite relation to other territories of origin, but the combinations on Mobile, reflecting water competition, are shown to have controlling influence.



## RATES FROM BUFFALO-PITTSBURGH TERRITORY.

The rates from the Buffalo-Pittsburgh zone to Tuscaloosa and to all points in Montgomery subterritory are on the basis of lowest combination on the Ohio River, the Virginia gateways, or south Atlantic ports, using to the Ohio River rates of the central freight association lines assimilated to the southern classification; to Virginia gateways the specifics of the trunk lines, which are lower than the rates to Virginia cities proper; or to south Atlantic ports, proportional rates plus certain wharfage and transfer charges. In so far as Tuscaloosa is concerned, the combinations on the south Atlantic ports have never affected or fixed the rates, the combinations on the Ohio River or Virginia gateways controlling. These rates were not changed on January 1, 1916, contemporaneously with the general changes to the southeast, but were revised December 15, 1916. The new scale to Tuscaloosa from Buffalo-Pittsburgh territory involves increases as follows:

Classes-----	1	2	3	4	5	6	A	B	C	D
Cents -----	2	2	1½	1	1	1	3	3	2	2

To Birmingham the increases are:

Classes-----	1	2	3	4	5	6	A	B	C	D
Cents -----	20	15	14½	14	10	11	5	3	2	2

and to Montgomery and Selma:

Classes-----	1	2	3	4	5	6	A	B	C	D
Cents -----	16	11	13½	10	8	4	7	3	2	2

from which it will be noted that the disadvantage against Tuscaloosa has been materially lessened.

## RATES FROM THE EAST.

Prior to 1898 rates from the east to Tuscaloosa were made on the lowest combination. In that year the Mobile & Ohio built into Tuscaloosa and reduced the rates from the west, whereupon the rates from the east also were reduced in order to enable eastern markets to compete with western markets; the reduction of the water-and-rail rates to Tuscaloosa being to the basis of the all-rail and water-and-rail rates to Columbus, Miss., and the all-rail rates made higher than the water-and-rail rates to the extent that the all-rail rates to Birmingham were higher than the water-and-rail rates to that point. The present rates are made the same as to Columbus, and, using the first six classes as typical, are, from Baltimore, 136, 117, 103, 87, 71, 58 cents. New York and Philadelphia are made differentials of 7, 6, 5, 5, 4, 3 cents higher than Baltimore, and from Boston differentials higher than New York are maintained for the first six classes, as follows: 5, 4, 4, 3, 2, 2 cents.

To Montgomery from New York the water-and-rail rates are made with relation to the combinations on Mobile, using the ocean rates to Mobile and the water rates from Mobile to Montgomery prescribed by the Alabama Railroad Commission. They are also made with relation to the rates to Atlanta, originally having been the same as to Atlanta. The all-rail rates are made the usual all-rail differentials higher, beginning with 12 cents first class. To Selma the rates are the same as to Montgomery, its situation being substantially similar. To Birmingham also the rates are the same as to Montgomery.

The establishment of rates from Boston differentially higher than from New York and Philadelphia with rates from New York and Philadelphia differentially higher than from Baltimore created a departure from the long-standing relationship of those points, which departure is the subject of attack in *Boston Chamber of Commerce et al. v. Ocean Steamship Company of Savannah et al.*, Docket No. 9148, pending. However, the new differentials apply alike to Tuscaloosa, Birmingham, Montgomery, and Selma, and there can be no resulting unlawful discrimination against Tuscaloosa.

Prior to January 1, 1916, the customary basis from the east to Birmingham, Montgomery, and Selma had been to apply Atlanta rates, but with the adjustment of the rates to Atlanta on the scale beginning with \$1.07 first class, water and rail, from Baltimore, which had obtained prior to 1905, the carriers determined that some higher rates could be properly applied, and the rates to Birmingham were made as to the first six classes, 5, 4, 4, 4, 3, 3 cents higher than to Atlanta, with rates to Montgomery and Selma the same as to Birmingham.

#### RATES FROM INTERIOR POINTS.

From interior eastern points the all-rail port rates are applied from points from which the eastern trunk lines accept to the Virginia or Maryland gateways the specifics or proportions which they accept from the ports. From points from which these specifics are higher than those applicable from the ports the through rates are made as much higher than the all-rail rates from the ports as the specifics from the interior points to the gateways are higher than the specifics from the ports. This basis applies to Birmingham, Montgomery, and Selma as well as to Tuscaloosa.

To Tuscaloosa the all-rail rates from the east have been reduced, but to Birmingham, Montgomery, and Selma and all other points in that general territory the new adjustment effected increases with no reductions either all rail or water and rail.

## RATES FROM VIRGINIA CITIES.

From Virginia cities to Tuscaloosa the rates prior to 1898 were made on lowest combination. In 1898 rates from the east to Tuscaloosa were made the same as to Columbus, Miss., as the result of the action of the Mobile & Ohio Railroad in reducing rates from the west; and the rates from Virginia cities were put on the same basis, that is, the same as from Virginia cities to Columbus, and this basis has been observed under the readjustment of January 1, 1916. To Atlanta the rates from Virginia cities are on a differential scale less than from Baltimore, as follows: Classes 1 to 6, 7, 6, 5, 4, 4, 3 cents. To Birmingham the rates are, as already shown, differentials of 5, 4, 4, 4, 3, 3 cents higher than the rates to Atlanta. The rates to Selma and Montgomery are the same as to Birmingham.

## RATES FROM SOUTH ATLANTIC PORTS.

From south Atlantic ports, such as Charleston and Savannah, to Tuscaloosa the same basis prevails as that in effect prior to January 1, 1916, viz, differentials of 8, 7, 6, 5, 4, 4 cents less than the rates from Virginia cities, and these are the differentials used in constructing rates from south Atlantic ports to Columbus, and to points in the so-called western group, lying on and south of the St. Louis-San Francisco Railway from Birmingham to Memphis, not including either of those points, but including lower Mississippi River crossings.

From Charleston to Birmingham, Montgomery, and Selma the rates are the same as from south Atlantic ports to Knoxville and Chattanooga, Tenn., which rates in turn are the same as from the Virginia cities to Knoxville and Chattanooga. This likewise is true from Savannah, except that from Savannah to Montgomery the rates are made 3, 3, 2, 1, 1, 1 cents lower than from Savannah to Birmingham.

## COMMODITY RATES.

The complaint does not instance any particular commodity rates and the comparisons offered in complainant's exhibits of selected commodities deal, in many instances, with special commodity rates as compared with class rates. Defendants' testimony and exhibits establish that the commodity rate adjustment has been harmonized with the new class-rate adjustment, allowance being made for the peculiar controlling conditions found in connection with individual commodities. The situation as to traffic from St. Louis, Ohio River crossings, and Memphis is illustrated by the following table:

Statement showing the changes in rates on representative commodities from Ohio River crossings, St. Louis, and Memphis to Tuscaloosa, Birmingham, and Montgomery, Ala.

[Figures in boldface type indicate class rates.]

Commodities.	Tuscaloosa, Ala.					Montgomery, Ala.				Birmingham, Ala.			
	Cincinnati.	Louisville.	Calro.	St. Louis.	Memphis.	Cincinnati.	Louisville-Calro.	St. Louis.	Memphis.	Cincinnati.	Louisville-Calro.	St. Louis.	Memphis.
<b>3. Asphalt and road oil, c. l.:</b>													
Old.....	<b>35</b>	<b>31</b>	<b>31</b>	<b>35</b>	<b>27</b>	<b>25</b>	<b>23</b>	<b>26</b>	<b>18</b>	<b>22</b>	<b>29</b>	<b>25</b>	<b>16</b>
New.....	<b>27</b>	<b>25</b>	<b>25</b>	<b>27</b>	<b>21</b>	<b>24</b>	<b>22</b>	<b>27</b>	<b>18</b>	<b>23</b>	<b>21</b>	<b>26</b>	<b>17</b>
Advance.....								<b>1</b>		<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
Reduction.....	<b>8</b>	<b>6</b>	<b>6</b>	<b>8</b>	<b>6</b>	<b>1</b>							
<b>4. Tar and pitch, c. l.:</b>													
Old.....	<b>21</b>	<b>18</b>	<b>14</b>	<b>21</b>	<b>10</b>	<b>21</b>	<b>19</b>	<b>23</b>	<b>15</b>	<b>19</b>	<b>17</b>	<b>23</b>	<b>13</b>
New.....	<b>27</b>	<b>25</b>	<b>25</b>	<b>27</b>	<b>21</b>	<b>24</b>	<b>22</b>	<b>27</b>	<b>18</b>	<b>23</b>	<b>21</b>	<b>26</b>	<b>17</b>
Advance.....	<b>6</b>	<b>7</b>	<b>11</b>	<b>6</b>	<b>11</b>	<b>3</b>	<b>3</b>	<b>4</b>	<b>3</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>4</b>
Reduction.....													
<b>8. Beverages, etc., c. l.:</b>													
Old.....	<b>48</b>	<b>44</b>	<b>45</b>	<b>48</b>	<b>40</b>	<b>28½</b>	<b>24½</b>	<b>32½</b>	<b>29½</b>	<b>26½</b>	<b>22½</b>	<b>30½</b>	<b>18½</b>
New.....	<b>39</b>	<b>35</b>	<b>34</b>	<b>39</b>	<b>31</b>	<b>34</b>	<b>30</b>	<b>38</b>	<b>26</b>	<b>34</b>	<b>30</b>	<b>38</b>	<b>26</b>
Advance.....						<b>5½</b>	<b>5½</b>	<b>5½</b>	<b>5½</b>	<b>7½</b>	<b>7½</b>	<b>7½</b>	<b>7½</b>
Reduction.....	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>								
<b>10. Building material, c. l.:</b>													
Old.....	<b>36</b>	<b>30</b>	<b>26</b>	<b>36</b>	<b>23</b>	<b>28</b>	<b>24</b>	<b>32</b>	<b>20</b>	<b>26</b>	<b>24</b>	<b>32</b>	<b>20</b>
New.....	<b>37</b>	<b>33</b>	<b>33</b>	<b>37</b>	<b>29</b>	<b>34</b>	<b>30</b>	<b>38</b>	<b>26</b>	<b>32</b>	<b>28</b>	<b>36</b>	<b>24</b>
Advance.....	<b>1</b>	<b>3</b>	<b>7</b>	<b>1</b>	<b>7</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>
Reduction.....													
<b>11. Canned goods, c. l.:</b>													
Old.....	<b>39</b>	<b>33</b>	<b>33</b>	<b>39</b>	<b>29</b>	<b>38</b>	<b>32</b>	<b>42</b>	<b>28</b>	<b>36</b>	<b>30</b>	<b>40</b>	<b>26</b>
New.....	<b>44</b>	<b>39</b>	<b>39</b>	<b>49</b>	<b>35</b>	<b>43</b>	<b>38</b>	<b>48</b>	<b>34</b>	<b>43</b>	<b>38</b>	<b>48</b>	<b>34</b>
Advance.....	<b>5</b>	<b>6</b>	<b>6</b>	<b>10</b>	<b>6</b>	<b>5</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>8</b>	<b>8</b>
Reduction.....													
Same, l. c. l.:													
Old.....	<b>58</b>	<b>50</b>	<b>50</b>	<b>58</b>	<b>46</b>	<b>63</b>	<b>54</b>	<b>68</b>	<b>50</b>	<b>56</b>	<b>46</b>	<b>60</b>	<b>42</b>
New.....	<b>63</b>	<b>56</b>	<b>56</b>	<b>70</b>	<b>52</b>	<b>63</b>	<b>55</b>	<b>69</b>	<b>51</b>	<b>62</b>	<b>55</b>	<b>69</b>	<b>51</b>
Advance.....	<b>5</b>	<b>6</b>	<b>6</b>	<b>12</b>	<b>6</b>		<b>1</b>	<b>1</b>	<b>1</b>	<b>6</b>	<b>9</b>	<b>9</b>	<b>9</b>
Reduction.....						<b>1</b>							
<b>14. Cotton ties, c. l.:</b>													
Old.....	<b>35</b>	<b>31</b>	<b>31</b>	<b>35</b>	<b>27</b>	<b>25</b>	<b>23</b>	<b>27</b>	<b>18</b>	<b>23</b>	<b>20</b>	<b>27</b>	<b>16</b>
New.....	<b>28</b>	<b>26</b>	<b>26</b>	<b>28</b>	<b>29</b>	<b>25</b>	<b>22</b>	<b>29</b>	<b>26</b>	<b>24</b>	<b>21</b>	<b>28</b>	<b>24</b>
Advance.....					<b>2</b>			<b>2</b>	<b>8</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>8</b>
Reduction.....	<b>7</b>	<b>5</b>	<b>5</b>	<b>7</b>									
<b>15. Flour, c. l.:</b>													
Old.....	<b>29</b>	<b>27</b>	<b>24</b>	<b>26</b>	<b>20</b>	<b>24</b>	<b>22</b>	<b>29</b>	<b>18</b>	<b>24</b>	<b>22</b>	<b>29</b>	<b>18</b>
New.....	<b>27</b>	<b>25</b>	<b>25</b>	<b>27</b>	<b>21</b>	<b>52</b>	<b>23</b>	<b>30</b>	<b>19</b>	<b>25</b>	<b>23</b>	<b>30</b>	<b>19</b>
Advance.....			<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>6</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>6</b>	<b>1</b>
Reduction.....	<b>2</b>	<b>2</b>											
<b>16. Food preparations, c. l.:</b>													
Old.....	<b>31</b>	<b>29</b>	<b>26</b>	<b>31</b>	<b>23</b>	<b>36</b>	<b>31</b>	<b>35</b>	<b>27</b>	<b>30</b>	<b>28</b>	<b>35</b>	<b>24</b>
New.....	<b>33</b>	<b>28</b>	<b>28</b>	<b>33</b>	<b>24</b>	<b>33</b>	<b>28</b>	<b>36</b>	<b>24</b>	<b>32</b>	<b>27</b>	<b>35</b>	<b>23</b>
Advance.....	<b>2</b>		<b>2</b>	<b>2</b>	<b>2</b>			<b>1</b>		<b>2</b>			
Reduction.....		<b>1</b>				<b>3</b>	<b>3</b>		<b>3</b>		<b>1</b>		<b>1</b>
<b>17. Fruits and vegetables, c. l.:</b>													
Old.....	<b>35</b>	<b>31</b>	<b>31</b>	<b>35</b>	<b>27</b>	<b>35</b>	<b>31</b>	<b>39</b>	<b>27</b>	<b>32</b>	<b>28</b>	<b>36</b>	<b>24</b>
New.....	<b>39</b>	<b>35</b>	<b>35</b>	<b>39</b>	<b>31</b>	<b>38</b>	<b>34</b>	<b>42</b>	<b>30</b>	<b>38</b>	<b>34</b>	<b>42</b>	<b>30</b>
Advance.....	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>6</b>
Reduction.....													
<b>21. Grain, vis: Wheat, c. l.:</b>													
Old.....	<b>27</b>	<b>25</b>	<b>22</b>	<b>24</b>	<b>18</b>	<b>24</b>	<b>22</b>	<b>24</b>	<b>18</b>	<b>24</b>	<b>22</b>	<b>24</b>	<b>18</b>
New.....	<b>27</b>	<b>25</b>	<b>25</b>	<b>27</b>	<b>21</b>	<b>25</b>	<b>23</b>	<b>28</b>	<b>19</b>	<b>25</b>	<b>23</b>	<b>28</b>	<b>19</b>
Advance.....			<b>3</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>1</b>
Reduction.....													
<b>22. Grain, except wheat, c. l.:</b>													
Old.....	<b>27</b>	<b>25</b>	<b>22</b>	<b>24</b>	<b>18</b>	<b>24</b>	<b>22</b>	<b>24</b>	<b>18</b>	<b>24</b>	<b>22</b>	<b>24</b>	<b>18</b>
New.....	<b>26</b>	<b>24</b>	<b>24</b>	<b>26</b>	<b>20</b>	<b>25</b>	<b>23</b>	<b>28</b>	<b>19</b>	<b>25</b>	<b>23</b>	<b>28</b>	<b>19</b>
Advance.....			<b>2</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>1</b>
Reduction.....	<b>1</b>	<b>1</b>											
<b>30. Meats, fresh, c. l.:</b>													
Old.....	<b>52</b>	<b>50</b>	<b>50</b>	<b>52</b>	<b>43</b>	<b>46</b>	<b>44</b>	<b>56</b>	<b>40</b>	<b>46</b>	<b>44</b>	<b>56</b>	<b>40</b>
New.....	<b>54</b>	<b>52</b>	<b>52</b>	<b>54</b>	<b>48</b>	<b>48</b>	<b>46</b>	<b>58</b>	<b>42</b>	<b>48</b>	<b>46</b>	<b>58</b>	<b>42</b>
Advance.....	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>5</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>
Reduction.....													
<b>31. Molasses and sirup, c. l.:</b>													
Old.....	<b>39</b>	<b>33</b>	<b>33</b>	<b>39</b>	<b>19</b>	<b>33</b>	<b>28</b>	<b>34</b>	<b>24</b>	<b>33</b>	<b>28</b>	<b>34</b>	<b>24</b>
New.....	<b>37</b>	<b>33</b>	<b>33</b>	<b>37</b>	<b>29</b>	<b>34</b>	<b>30</b>	<b>36</b>	<b>26</b>	<b>32</b>	<b>28</b>	<b>34</b>	<b>24</b>
Advance.....					<b>10</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>				
Reduction.....	<b>2</b>			<b>2</b>						<b>1</b>			

*Statement showing the changes in rates on representative commodities from Ohio River crossings, St. Louis, and Memphis to Tuscaloosa, Birmingham, and Montgomery, Ala.—Continued.*

[Figures in boldface type indicate class rates.]

Commodities.	Tuscaloosa, Ala.					Montgomery, Ala.				Birmingham, Ala.			
	Cincinnati.	Louisville.	Cairo.	St. Louis.	Memphis.	Cincinnati.	Louisville-Cairo.	St. Louis.	Memphis.	Cincinnati.	Louisville-Cairo.	St. Louis.	Memphis.
36. Salt, c. l.:													
Old.....	19	17	14	19	14	16	14	19	14	16	14	19	16
New.....	20	18	18	20	18	19	17	22	17	19	17	23	18
Advance.....	1	1	4	1	4	3	3	3	3	3	3	3	3
Reduction.....													
40. Soap, carload:													
Old.....	41	37	37	41	33	32	27	35	23	24	20	28	16
New.....	37	33	33	37	29	32	28	36	24	29	25	33	21
Advance.....							1	1	1	5	5	5	5
Reduction.....	4	4	4	4	4								
43. Stoves and ranges, c. l.:													
Old.....	63	55	55	63	51	54	47	55	43	41	34	42	30
New.....	57	52	52	59	51	54	47	55	46	48	41	49	43
Advance.....									3	7	7	7	13
Reduction.....	5	3	3	3									
Same, l. c. l.:													
Old.....	89	79	79	89	75	75	65	76	61	53	48	59	44
New.....	75	69	69	79	75	75	65	76	74	69	59	70	61
Advance.....									13	11	11	11	17
Reduction.....	14	10	10	10									

It will be seen that there are material reductions in many rates to Tuscaloosa while to Birmingham and Montgomery increased or unchanged rates are the rule, the whole structure accomplishing a considerable lessening of the former differences in favor of Birmingham and Montgomery.

Most of the prevailing commodity rates to Montgomery and Selma were established in 1906 upon demand of merchants there who represented that by shipping to Mobile and reshipping by rail to Montgomery and Selma they could secure rates lower than the through rail rates. The system of commodity rates was thereupon revised to the basis of not higher than the Mobile all-rail combination. The Mississippi River points differential adjustment controls rates from Ohio and Mississippi river crossings to New Orleans and Mobile and results in rates from Cairo lower than from any other Ohio River crossing. The rail rate to Mobile plus the rail rate thence to Montgomery and Selma, which is influenced by the water rate from Mobile, fixes the through rail rate from Cairo, and Cairo is thus made the pivotal point in the commodity structure.

As to grain and grain products, including flour, an important traffic, the new relative class rates do not present a true index of the situation for the reason that commodity rates are in effect from St. Louis and the Ohio River crossings to Tuscaloosa which are lower than the class rates on those articles.

From New Orleans the class-rate adjustment is generally followed, the commodity rates being the same to Tuscaloosa as to Birmingham.

From the east it is shown that the tonnage consists for the most part of merchandise moved under class rates for the numbered classes from 1 to 6. In consequence, the commodity items from the east are limited under the new adjustment to a few articles, such, for example, as canned goods, soap, and special iron. From Baltimore, as typical, the rates are:

To—	Canned goods, c. l.		Soap, c. l.		Special iron, c. l.	
	All rail.	Water and rail.	All rail.	Water and rail.	All rail.	Water and rail.
Tuscaloosa.....	54	54	47	47	43	43
Birmingham.....	53	47	39	34	41	36
Montgomery.....	53	47	39	34	41	36
Selma.....	53	47	39	34	41	36

The rates on green coffee, any quantity, from New Orleans to Tuscaloosa are: In single bags, 60 cents; in double bags, 49 cents. To Birmingham, farther distant over the same route, the rates are: Carload, minimum weight 30,000 pounds, 23 cents; less carload, 30 cents; or the same as the rates to Nashville, Tenn. The rates to Tuscaloosa are fourth class and fifth class, respectively, while those to Birmingham are commodity rates. This departure from the requirements of the fourth section is unauthorized and should at once be corrected.

COMPETITIVE SITUATION AT TUSCALOOSA, BIRMINGHAM, MONTGOMERY, AND SELMA.

We have seen that only the Alabama Great Southern, Louisville & Nashville, and Mobile & Ohio serve Tuscaloosa. Single-line service from St. Louis and Ohio River crossings is afforded by the Louisville & Nashville and the Mobile & Ohio, but otherwise Tuscaloosa's access to all of the gateways and ports under review is over the lines of two or more carriers. Birmingham, with its network of rival lines, is reached from all directions by single-line hauls. Montgomery also has the advantage of single-line hauls by the Louisville & Nashville and Mobile & Ohio from St. Louis and Ohio and Mississippi river crossings, as well as from New Orleans and Gulf ports, and of single-line hauls by the Atlantic Coast Line, Seaboard Air Line, and Central of Georgia from Virginia and south Atlantic ports. Selma is served from Virginia and south Atlantic ports by the direct line of the Southern Railway and from New Orleans by the direct line of the Louisville & Nashville.



Originally Tuscaloosa was a local station on the Alabama Great Southern and rates thereto, generally speaking, as to other local stations, were made by combination on Birmingham. The advent in 1898 of the Mobile & Ohio with direct access to St. Louis and Cairo created a new competitive factor and resulted in reductions not only from St. Louis, but from all Ohio River crossings.

The Frisco with its greater mileage west of the Mississippi River and its short line from Memphis to Birmingham and the Illinois Central with rails from various Ohio and Mississippi river crossings, occupy an important position as to Birmingham traffic and have wielded and continue to wield controlling influence over the rates to Birmingham. Neither the Frisco nor the Illinois Central reaches Tuscaloosa.

Rates from Ohio River crossings and points north and west thereof to Mobile, made the same as depressed, water compelled rates to New Orleans, have necessitated the application of through all-rail rates to Tuscaloosa, Birmingham, Montgomery, and Selma made with regard to the available combinations on Mobile and lower than would otherwise obtain. We have seen that the pivot of the Ohio River adjustment is Louisville. Rates from Louisville to Atlanta have been heretofore and now are made the same as water-and-rail rates from Baltimore to Atlanta, the present scale beginning with \$1.07 first class. The Louisville to Atlanta rate in turn fixes the rate from Cincinnati to Atlanta and in consequence of our finding in *Atlanta Freight Bureau v. N., C. & St. L. Ry.*, 29 I. C. C., 476, the Cincinnati to Birmingham rates are made no higher than the rates from Cincinnati to Atlanta. The relative adjustment from the east and from the west to Atlanta has been in effect since 1879 and the Baltimore to Atlanta water-and-rail rate must continue to fix the measure of the Louisville to Atlanta rate if this relative adjustment is to stand. Its condemnation is not warranted on the record here made.

The numerous lines from Ohio and Mississippi river crossings are and always have been in keen competition for traffic from the north and west through the several crossings and the present adjustment from those crossings to Montgomery subterritory as a part of southeastern territory is the culmination of long years of conflict between the carriers operating from the competing gateways or crossings and was fixed by compromise arbitration which was approved in the well-known Cooley award in 1886. Dealing with the key points in the adjustment from the west it should be further stated that the average distance from Cincinnati to points in Montgomery subterritory is greater than the average distance from Louisville and other Ohio River crossings and in practically every instance the distance from Cincinnati to the individual destinations is greater than the distance

from Louisville. The application from St. Louis of rates higher than from Evansville to the extent of the southeastern differentials does not give full recognition to the greater distances from St. Louis, but results from the compromise before mentioned.

The present record shows that eastern markets of supply are in vigorous competition with western markets of supply for the southeastern trade, and where leading and important lines from the west and from the east meet in a common consuming market as is the case at Birmingham low competitive rates inevitably result.

#### RATES FROM MEMPHIS.

Rates from Memphis uniformly 4 cents less than from Cairo were so made because from the west the rates to Cairo were usually 4 cents less than the rates to Memphis, the through rates thus being equalized. In the *Atlanta Freight Bureau Case, supra*, we suggested with respect to the relative adjustment from Memphis and from Ohio River crossings to Birmingham that the differential in favor of Memphis of 4 cents on the lettered classes might properly be continued, but that for the numbered classes a differential scale approximating the one then obtaining from Cincinnati as compared with Louisville would be more appropriate. In consequence the carriers have now applied from Memphis to Birmingham rates on the numbered classes differentially less than the rates from Cairo and Evansville beginning 10 cents first class and on the lettered class rates the customary differential of 4 cents less than from Cairo and Evansville. To Tuscaloosa, Montgomery, and Selma, however, the differential of 4 cents is observed on all classes.

#### ALL-RAIL AND WATER-AND-RAIL RATES.

Complainant urges that the elimination of the differentials between the all-rail and water-and-rail rates from the east to Tuscaloosa under the new adjustment aggravates an unjust relationship. Taking Baltimore and the first six classes as typical, the all-rail rates to Tuscaloosa were 142, 122, 108, 88, 73, 60, and the water-and-rail rates 130, 112, 99, 80, 67, 55, differences of 12, 10, 9, 8, 6, 5. The present rates, both all rail and water and rail, are 136, 117, 103, 87, 71, 58. The same differences existed between the all-rail and water-and-rail rates to Birmingham, Montgomery, and Selma prior to January 1, 1916, and are now in effect, the present rates to these points being, all rail, 124, 106, 94, 80, 65, 54; water and rail, 112, 96, 85, 72, 59, 49, or increases of 5, 4, 2, 2, 2, 3 over the old rates

to Birmingham and 11, 7, 6, 8, 6, 7 over the old rates to Montgomery and Selma. The change at Tuscaloosa results from the shifting of the eastern boundary line of so-called differential territory. Formerly this territory included points south of the line from Knoxville to Chattanooga and on and east of the line of the Alabama Great Southern, Chattanooga to Meridian, thence east of the Mobile & Ohio, Meridian to Mobile, not including Chattanooga, Meridian, or Mobile. The present boundary lies south of the line from Knoxville to Chattanooga and on and east of the lines of the Alabama Great Southern and the Southern Railway from Chattanooga through Birmingham and Selma to Mobile. It was and is necessary for the ocean-and-rail carriers from the east to maintain lower rates than those of the all-rail lines in order to offset the disadvantage of longer time and otherwise inferior service with added costs of marine insurance, transfers, etc., hence the original differentials. Direct lines extending south from the Ohio River, such as the Louisville & Nashville, Cincinnati, New Orleans & Texas Pacific, Illinois Central, and Mobile & Ohio, and handling traffic from the east to the southeast through the Ohio River in connection with east and west trunk lines, had and have no real interest in the water-and-rail movement through Virginia or south Atlantic ports. These lines did not consent to the original application of lower rates, water and rail than all rail, to Chattanooga, Birmingham, Anniston, Montgomery, and other points reached by their rails, that is, to the border territory, but under a compromise reached about 1894 the scale of differentials above set out was agreed upon for application to all points in the territory south and east of the old boundary line. It should be said, too, that except to Chattanooga and points in the Attalla-Birmingham group and Tuscaloosa and Meridian, the rates to points on the Alabama Great Southern were constructed on the lowest combination, and simply mirrored the water-and-rail and all-rail differential adjustment to Birmingham. Under the adjustment of January 1, 1916, the lines having direct rails from south Atlantic ports to such points as Chattanooga, Birmingham, Montgomery, and Selma insisted upon continuance of the differentials, and lines serving these and other border points from the east through the Ohio River, which would otherwise be in position to control the rail rates, assented. To Tuscaloosa, however, and to points similarly situated, which are not reached by any direct lines from the south Atlantic ports, the Ohio River lines refused to apply a differential scale and the present boundary reflects competition or lack of competition with the direct lines from the ports, as described. Stated otherwise, the lines from the Ohio River established to points

reached by direct lines from south Atlantic ports all-rail rates on basis of the water-and-rail rates and declined to observe any higher rates via their all-rail routes than would apply via the water-and-rail routes.

#### WATER COMPETITION FROM MOBILE.

It is also the contention of complainant that actual and potential water competition is as strong at Tuscaloosa as at Montgomery or Selma; that rail carrier competition at Tuscaloosa, although with fewer lines, is just as forceful as at Birmingham; that the physical location of Tuscaloosa is not excelled by any of the other points; and that to deny Tuscaloosa the benefit of these facts as fully as such benefit is accorded the other points is without the lawful authority of defendants and creates disadvantages which the law is designed to prohibit.

We think, however, that the test of the degree of competition as to water-borne traffic from Mobile northward lies in the rates of the water carriers rather than in the continuity of the water service or the volume of water-borne tonnage. Nor can it be denied that points having direct single-line routes to and from river crossings, gateways, and ports and the service of a larger number of carriers having diverse connecting routes, possess the advantage of competitive forces which are lacking or are found in less degree at a point which has no direct single-line routes to or from the ports and is served by fewer rail lines.

From Mobile up the Tombigbee and Warrior rivers to Tuscaloosa, 360 miles, and beyond to Cordova, Ala., a total distance of 441 miles, there is navigation the year around for boats of less than 6 feet draft, the United States government having completed, in May, 1915, at an expenditure of more than \$10,000,000, after the rendition of our report in *Fourth Section Violations in the Southeast*, the last improvement necessary to make of these rivers a canalized watercourse. Further improvement work is under way, looking to widening of the channel and increasing the minimum depth of water to 9 feet, and continuous maintenance work will be necessary hereafter.

The Alabama River, on which Selma and Montgomery are located, has provided more or less regular transportation to those cities for many years. At present there is uninterrupted navigation the year around to Selma for boats of light draft, and similar navigation 9 to 10 months of each year and sometimes throughout the year to Montgomery. Much is said in the record of the comparative boat service and river conditions, and figures are submitted showing the respective volumes of water-borne traffic to Tuscaloosa, Selma, and Montgomery. We shall not enter this field of conjecture. Lower river

rates to Selma and Montgomery than to Tuscaloosa, making all reasonable allowance for what is designated "store-door delivery" at Tuscaloosa and for insurance, is the best evidence of the strength of competition. On this basis it is less strong to Tuscaloosa than to Selma and Montgomery.

To Tuscaloosa from Mobile the current boat rates are:

Classes .....	1	2	3	4	5	6	A	B	C	D
Cents .....	38	31	26	23	18	16	16	16	15	15

to which must be added for wharfage, transfer and insurance, carloads 2 cents per 100 pounds, less carloads 4 cents per 100 pounds on all classes. The rail rates are:

Classes .....	1	2	3	4	5	6	A	B	C	D
Cents .....	79	69	58	45	42	31	20	23	22	16

Special commodity rates are provided on many articles both by the boats plying to Tuscaloosa and those plying to Selma and Montgomery. A comparison of some of these follows:

Special commodity boat rates from Mobile.

Commodities.	To Selma, any quantity.	To Mont- gomery, any quantity.	To Tuscaloosa.	
			C. L.	L. C. L.
Grain .....	8	9	10	19
Grain products (mixed feed, etc.) .....	9	9	10	19
Flour, in barrels or sacks .....	9	10	12	14
Canned goods, in tins .....	10	11	12	14
Preserves, jellies, etc., in glass .....	14	15	17	19
Ammunition .....	14	14	17	.....
Automobiles, viz:				
Rated D-1 class .....	52	52	52	54
Rated 1½ times first class .....	39	39	52	54
Rated first class .....	26	26	52	54
Bagging .....	7	8	12	14
Beans and peas .....	9	10	17	19
Chalk .....	20	.....	13	20
Coffee .....	12	12	17	19
Iron, special .....	9	9	10	20
Molasses .....	9	10	20	23
Nails and wire .....	9	9	10	20
Rice .....	9	10	10	12
Salt .....	9	9	10	12
Soap .....	12	12	19	21
Soda .....	12	12	19	21
Sugar .....	8	8	10	12
Ties, cotton .....	7	7	10	12
Starch, c. l. ....	12	12	17	.....
Starch, l. c. l. ....	20	20	.....	19

While rates from Mobile to Tuscaloosa, Montgomery, and Selma are under the jurisdiction of the Alabama Railroad Commission and are not here in issue, the combination of these rates with the rates to Mobile will be referred to for the purpose of portraying the extent to which the influence of the river competition has been and is now reflected in the through all-rail rates.

Comparative statement of through all-rail rates and combination rates all rail to Mobile, and water beyond.

From—	To Tuscaloosa. <sup>1</sup>										To Montgomery and Selma. <sup>2</sup>									
	1	2	3	4	5	6	A	B	C	D	1	2	3	4	5	6	A	B	C	D
St. Louis:																				
Carload—																				
Mobile combination.....	130	108	93	75	60	53	43	56	42	37	116	97	85	67	54	47	35	48	35	29
All rail.....	118	104	89	72	62	48	37	44	34	28	121	106	95	74	60	49	37	44	34	28
Difference.....	12	4	4	3	12	5	6	12	8	9	15	19	10	17	16	12	12	4	1	1
Less than carload—																				
Mobile combination.....	132	110	95	77	62	55	45	58	44	39										
All rail.....	118	104	89	72	62	48	37	44	34	28										
Difference.....	14	6	6	5	.....	7	8	14	10	11										
Cincinnati:																				
Carload—																				
Mobile combination.....	138	116	101	79	64	57	46	59	44	39	124	105	93	71	58	51	38	51	37	31
All rail.....	118	104	89	72	62	48	37	44	34	28	108	97	88	70	57	47	34	38	29	25
Difference.....	20	12	12	7	2	9	9	15	10	11	16	8	5	1	1	4	4	13	8	6
Less than carload—																				
Mobile combination.....	140	118	103	81	66	59	48	61	46	41										
All rail.....	118	104	89	72	62	48	37	44	34	28										
Difference.....	22	14	14	9	4	11	11	17	12	13										
Louisville:																				
Carload—																				
Mobile combination.....	130	108	93	75	60	53	43	56	42	37	116	97	85	67	54	47	35	48	35	29
All rail.....	108	94	79	64	55	42	33	42	32	26	98	87	78	62	50	41	30	36	27	23
Difference.....	22	14	14	11	5	11	10	14	10	11	18	10	7	5	4	6	5	12	8	6
Less than carload—																				
Mobile combination.....	132	110	95	77	62	55	45	58	44	39										
All rail.....	108	94	79	64	55	42	33	42	32	26										
Difference.....	24	16	16	13	7	13	12	16	12	13										

<sup>1</sup> Combination rates to Tuscaloosa include transfer, wharfage, and marine insurance.  
<sup>2</sup> Combination rates to Montgomery include transfer and marine insurance; those to Selma, transfer only.  
<sup>3</sup> Rates to Montgomery and Selma apply any quantity.  
<sup>4</sup> All-rail rates higher.



Comparative statement of through all-rail rates and combination rates all rail to Mobile, and water beyond—Continued.

From—	To Tuscaloosa.										To Montgomery and Selma.									
	1	2	3	4	5	6	A	B	C	D	1	2	3	4	5	6	A	B	C	D
<b>Oak:</b>																				
Carload—																				
Mobile combination.....	115	96	83	67	53	47	39	50	37	33	101	85	76	59	47	41	31	42	30	24
All rail.....	106	94	79	64	55	42	33	42	32	26	98	87	78	62	50	41	30	36	27	23
Difference.....	7	2	4	3	12	5	6	8	5	6	3	12	13	13	13	.....	1	6	3	1
<b>Less than carload—</b>																				
Mobile combination.....	117	98	85	69	55	49	41	52	39	34										
All rail.....	108	94	79	64	55	42	33	42	32	26										
Difference.....	9	4	6	5	.....	7	8	10	7	8										
<b>Memphis:</b>																				
Carload—																				
Mobile combination.....	105	87	75	60	50	43	36	46	35	30	91	76	67	52	44	37	28	38	28	22
All rail.....	104	90	76	60	51	38	29	38	28	23	94	83	74	58	46	37	26	32	23	19
Difference.....	1	13	.....	.....	11	5	7	8	7	8	13	17	17	16	12	.....	2	6	5	3
<b>Less than carload—</b>																				
Mobile combination.....	107	89	77	62	52	45	38	48	37	32										
All rail.....	104	90	76	60	51	38	29	38	28	23										
Difference.....	3	11	2	2	1	7	9	10	9	10										
<b>New Orleans:</b>																				
Carload—																				
Mobile combination.....	90	72	59	49	41	34	30	33	29½	27	76	61	51	41	35	28	23	25	22½	19
All rail.....	97	82	71	60	49	40	28	36	27	23	89	79	61	48	41	36	24	30	23	18
Difference.....	17	110	112	111	18	16	2	13	2½	4	113	118	110	17	16	18	12	15	½	1
<b>Less than carload—</b>																				
Mobile combination.....	92	74	61	51	43	36	32	35	31½	29										
All rail.....	97	82	71	60	49	40	28	36	27	23										
Difference.....	15	18	110	19	16	14	4	11	4½	6										

1All-rail rates higher.

It is apparent from this tabulation that while the through all-rail rates to Tuscaloosa are higher than the through all-rail rates to Montgomery and Selma the carriers have gone further at Tuscaloosa than is true at Montgomery and Selma in meeting and offsetting by the all-rail routes the rail-and-water combinations. For illustration, the rates from the various points of origin to Mobile are the same whether the traffic is destined to Tuscaloosa or Montgomery, but the actual boat rates from Mobile to Tuscaloosa are higher than the actual boat rates from Mobile to Montgomery by from 14 cents carload, and 16 cents less carload, on first-class traffic down to 8 cents carload, and 10 cents less carload, on class D traffic.

As to commodity rates an examination of the specific rates on many of the more important articles, particularly those to which the boats accord special rates, discloses that Tuscaloosa is even more favorably treated; that is, that the through all-rail commodity rates in most instances are less than or more closely approximate the rail-and-water combinations than is the case to Montgomery and Selma.

#### CONCLUSION.

Complainant urges that the rates from all points of origin to Tuscaloosa should be on a parity with rates to Birmingham and directs attention to the so-called Birmingham district or group to points included in which inbound class and commodity rates for years have been and now are the same as to Birmingham proper. In other words, it seeks to have the boundaries of the Birmingham district or group extended some 56 miles to include Tuscaloosa. The grouping heretofore, taking the Louisville & Nashville as typical, has never extended farther than Bessemer, a point 11 miles distant from the Birmingham depot, and has in the main included only points lying within or immediately adjacent to the Birmingham switching limits and reached by substantially all of the carriers which compete at Birmingham. A different situation exists with reference to outbound rates from coal and iron producing points, many of which are accorded the same rates as from Birmingham; but these rates are not in controversy and their controlling competitive conditions are not similarly applicable to the inbound rate structure. As a mere grouping proposition the record presents no justification for the establishment of rates to Tuscaloosa on the same basis as to Birmingham, Bessemer, Ensley, Pratt City, and other Birmingham rate points. If there is warrant for the inclusion in the Birmingham group of Tuscaloosa or similar distant points it must be sought elsewhere than in the uniformity of inbound rates to Birmingham near-by points.

Tuscaloosa's merchants and shippers sometimes buy in much the same markets as those at Birmingham, Montgomery, and Selma, and the selling territories often overlap. In fact it is stated that Birmingham can buy against Tuscaloosa, ship to Birmingham, and reship to Tuscaloosa and contiguous points in competition with Tuscaloosa. These conditions, however, are due in part to the outbound rates which are not before us. Any differences in inbound rates must be reflected in the ability of one city to compete with others, but marked dissimilarity of conditions affecting the competing points may and should be recognized in any relative adjustment of rates, and where such recognition entails rate disparities the primary question is whether the disparities are fully warranted by the varying conditions. In this case we are of opinion and find that the relative potency of the competitive forces and the wide variance of controlling influences at Tuscaloosa, Birmingham, Montgomery, and Selma are such as to negative the allegation of unlawfulness in the prejudice against or disadvantage to Tuscaloosa. The complaint will therefore be dismissed.

For many years the rates from New Orleans to Tuscaloosa have been the same as from New Orleans to Birmingham and the relation is continued under the revision of January 1, 1916, the common rates being on a 97-cent scale. In 1896, because of the competition between the various Ohio and Mississippi river crossings the New Orleans & Northeastern and Alabama Great Southern made the rates from New Orleans to Birmingham on the first six classes the same as the rates from Cincinnati to Birmingham. Under the revised rates of January 1, 1916, and pursuant to Fourth Section Order 8866, the rates from New Orleans to Birmingham were made the same as the rates from Louisville to Birmingham. From New Orleans to Birmingham by the short route it is 355 miles, and from Louisville to Birmingham by the short route it is 394 miles.

The carriers show that market competition between New Orleans and the Ohio River cities, St. Louis, and Memphis is keener at Birmingham than at Tuscaloosa; and consequently that, in according the latter the same rates from New Orleans as Birmingham, Tuscaloosa receives lower rates than it otherwise would were this market competition not present at Birmingham.

It must be understood, however, that our findings herein are without prejudice to any conclusions which may be reached on the comprehensive record now making in *Southeastern Rate Adjustment*, Docket No. 9516, *supra*.

An appropriate order will be entered.

COMMISSIONERS ATTCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.

No. 8950.  
WAUSAU SOUTHERN LUMBER COMPANY  
v.  
GULF & SHIP ISLAND RAILROAD COMPANY ET AL.

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*Submitted January 22, 1917. Decided December 4, 1917.*

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Rate on blower pipe in less than carloads from Chicago, Ill., to Laurel, Miss., found legally applicable and not shown to have been unreasonable. Complaint dismissed.

*G. T. Wilson* for complainant.

*Frank W. Gwathmey* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of lumber at Laurel, Miss. By complaint, filed May 24, 1916, it alleges that the double first-class rate of \$2.76 per 100 pounds charged on a less-than-carload shipment of 12 pieces of blower pipe forwarded July 21, 1915, from Chicago, Ill., to Laurel, was unreasonable to the extent that it exceeded the third-class rate of 95 cents per 100 pounds. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in cents per 100 pounds.

This pipe was shipped with an ensilage cutter. In use the pipe is attached to the cutter and the ensilage is forced through it by air pressure into a silo through an opening at the top. The ensilage cutter was shipped k. d., and charges were assessed thereon at the legally applicable third-class rate of 95 cents. The pipe, which was not nested, weighed 210 pounds and charges were collected thereon in the sum of \$5.80 at the double first-class rate of \$2.76. Complainant does not attack the measure of the rate charged, its sole contention being that the pipe was a necessary part of the cutter and, therefore, that under the following rule of the southern classification the rate on the cutter was applicable to the pipe:

Parts or pieces constituting a complete article received as one shipment will be charged at the rating provided for the complete article.

Defendants contend that although the conveyor pipe is an accessory to the cutter, it is not an integral part thereof; and that the comparatively light and bulky nature of the pipe justifies the charging thereon of a higher rate than on ensilage cutters.

Effective April 15, 1917, the southern classification was amended to provide specifically that the ratings on ensilage cutters will not apply on blow pipe shipped therewith.

We find that the pipe constituting this shipment was not a part of the ensilage cutter and that the rate assessed was legally applicable. As this rate is not shown to have been unreasonable, the complaint must be dismissed.

An appropriate order will be entered.

CLARK, MEYER, AITCHISON, and WOOLLEY, *Commissioners*, dissenting.

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No. 8429.

D. C. STIMSON ET AL.

v.

LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY  
COMPANY ET AL.

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PORTION OF FOURTH SECTION APPLICATION No. 1065.

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*Submitted October 11, 1916. Decided December 4, 1917.*

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Rates on lumber in carloads from Owensboro, Ky., to New York and Brooklyn, N. Y., and Philadelphia, Pa., not shown to have been or to be unreasonable or unduly prejudicial. Complaint dismissed.

*R. B. Coapstick* for complainants.

*M. Carter Hall* for Louisville, Henderson & St. Louis Railway.

*J. L. Durrett* for Illinois Central Railroad Company.

*Walter Nichols* for Cleveland, Cincinnati, Chicago & St. Louis Railway; New York Central Railroad west; and central freight association lines.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are D. C. Stimson and J. V. Stimson, copartners, engaged in the manufacture of lumber at Owensboro, Ky., under the name of J. V. Stimson & Company. By complaint, filed November 8, 1915, they allege that the rates collected by defendants on 53 carloads of lumber shipped from Owensboro to New York and Brooklyn, N. Y., and Philadelphia, Pa., between October 6, 1913, and August 30, 1915, inclusive, were unreasonable and unduly prejudicial to the extent that they exceeded the rates from Evansville, Ind., and in

violation of the long-and-short-haul rule of the fourth section. Reparation is asked and the establishment of reasonable and nonprejudicial rates for the future. Rates are stated in cents per 100 pounds.

The Louisville, Henderson & St. Louis Railway, which is the short line from Owensboro to Louisville, Ky., and which controls the rates from Owensboro to the east, assumed the burden of the defense and will hereinafter be referred to as defendant. The main line of this road practically parallels the Ohio River from Henderson, Ky., 12 miles south of Evansville, to Strawberry, Ky., about 6 miles west of Louisville. It has trackage rights over the Louisville & Nashville Railroad from Henderson to Evansville and from Strawberry to Louisville. Owensboro is on the south bank of the Ohio River on defendant's main line, but it is not a river crossing. It is 42 miles east of Evansville, 30 miles east of Henderson, and 114 miles west of Louisville, and is served by three carriers, the defendant, the Louisville & Nashville, and the Illinois Central Railroad. Twenty-five of the shipments moved from Owensboro over the Illinois Central, 25 over the Louisville & Nashville, and 3 over defendant's line. All moved through Louisville. Charges were assessed at the legally applicable rates of 27.5 cents to New York and Brooklyn and 25.5 cents to Philadelphia at the beginning of the period covered by the complaint, and increased during that period following the *Five Per Cent Case*, 31 I. C. C., 351, to 28.7 cents and 26.7 cents, respectively. As the lumber rates to New York and Brooklyn are the same and the Philadelphia rates are made differentially under those to New York it will be necessary to consider only the rates to New York.

The rate on lumber, in carloads, from Evansville to New York is 25.7 cents for a short-line distance of 974 miles, and from Louisville 22.8 cents for a short-line distance of 860 miles. Rates on all classes and commodities, including lumber, from points on defendant's line to points north of the Ohio River are generally based on the combination on the river. This is true of Henderson, the 3-cent local rate on lumber from that point being added to the rate from Evansville, the total of 28.7 cents being published as a joint rate applicable by way of either Evansville or Louisville. When defendant's line was first built steamboat lines operating on the Ohio River were applying approximately the Henderson rate from Owensboro to Evansville, and as a result of this competition rates from Owensboro to points north of the river were established on the same basis as the Henderson rates and lower than the Owensboro combinations on Evansville. This equality has since been maintained. The rates from Evansville to points in trunk line territory were established and are controlled by lines operating wholly north of the Ohio River, and in order for defendant to participate in traffic from Evansville to New York it is

47 I. C. C.



compelled to make the rates established by the northern roads applicable over its line. The result of this adjustment is that the lumber rate from Evansville to New York is lower than the rates from intermediate points on defendant's line, including Owensboro, and that the lumber rates from Owensboro and Henderson to New York are slightly lower than from certain intermediate points on defendant's line.

Complainants rely principally upon comparisons of the rates assailed with those from Evansville, at which point certain of their competitors are located, and with a few rates from points in central freight association territory to New York and Philadelphia, which are relatively upon a somewhat lower basis. The lumber rate from Owensboro to New York over the short-line distance yields ton-mile earnings of 5.89 mills and car-mile earnings, based on an average carload weight of 51,115 pounds, of 15 cents.

For defendant it is contended that as the rates cited by complainants apply wholly within central freight association and trunk line territories they are not properly comparable with the rate assailed. Numerous lumber rates were cited from Kentucky junction points to New York, and from points in the southeast to points in central freight association and trunk line territories with which, distance considered, the rate from Owensboro to New York compares favorably. Evidence was also introduced on behalf of defendant to show that operating conditions on its line are unusually difficult, and that, generally speaking, the country which it traverses is unproductive, the volume of traffic light, competition with water lines keen, and its financial condition poor. It contends that in view of these conditions the additions to the lumber rates from the river crossings, which are stated to be upon a relatively low basis, of 5.9 cents for the haul of 114 miles from Owensboro to Louisville, or 3 cents for the haul of 42 miles from Owensboro to Evansville, are not unreasonable.

With respect to the allegation of undue prejudice, defendant pointed out the necessity for meeting by way of its longer route from Evansville to New York the rate established by the northern carriers by way of their shorter routes; the fact that the withdrawal of defendant from business at Evansville would have no effect upon the Evansville rates; and the competitive influences at intermediate points on its line.

Most of the evidence upon which defendant relies has been fully discussed in previous cases and need not be further detailed here. *Railroad Commission of Kentucky v. L. & N. R. R. Co.*, 13 I. C. C., 300; and *Class and Commodity Rates*, 38 I. C. C., 411. In the case first cited we found that rates generally from Owensboro and Henderson to points in trunk line and central freight association

territories were not unreasonable and that the charging of higher rates from Owensboro and Henderson than from Evansville was not unjustly discriminatory. In *Class and Commodity Rates, supra*, we said, with reference to defendant:

Its entire rate adjustment is built up around Louisville, Owensboro, Henderson, and Evansville, and if it is compelled to observe the rates applying to and from these points as maxima to and from its intermediate stations, the necessary result will be a blanket adjustment over its entire line, and a reduction in its total revenue so great as to make it doubtful whether it could earn operating expenses. \* \* \* It is our opinion that this is a proper case for relief.

That portion of defendant's Fourth Section Application No. 1065 by which authority is sought to charge lower rates on lumber from Evansville to these destinations than from Owensboro and other intermediate points was heard with this case. The fourth section departures here presented are disposed of in Fourth Section Order No. 6727 and, therefore, no finding with respect thereto is necessary. That order permits, among other things, the charging of rates on lumber from Evansville and Henderson to New York lower than the rates from intermediate points on defendant's line, provided the rates from such intermediate points do not exceed 120 per cent of the rate on like traffic from Chicago, Ill., to New York, and that they do not exceed the lowest available combination. The rate from Owensboro conforms to these requirements.

We find that the rates assailed are not shown to have been or to be unreasonable or unduly prejudicial. An order dismissing the complaint will be entered.

COMMISSIONER McCHORD did not participate in the disposition of this case.

47 L. C. C.

No. 8953.  
STEWART IRON COMPANY, LIMITED,  
v.  
PENNSYLVANIA COMPANY ET AL.

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*Submitted December 22, 1916. Decided December 4, 1917.*

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Defendants' refusal to compensate complainant for the expense of spotting cars moving interstate to or from its plant at Sharon, Pa., while at the same time performing a like service without charge for complainant's competitors similarly situated, found to have subjected complainant to undue prejudice. Reparation awarded.

*Hoyt, Dustin, Kelley, McKeehan & Andrews* and *J. B. Putnam* for complainant.

*William W. Collin, jr.*, for Pennsylvania Company.

*T. H. Burgess* for Erie Railroad Company.

*S. H. West* for New York Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a limited partnership association operating a blast furnace for the manufacture of pig iron at Sharon, Pa. By complaint, filed May 26, 1916, as amended, it alleges that defendants' failure to reimburse complainant for its cost of spotting cars moving interstate to or from complainant's plant during the period from April 1, 1914, to May 8, 1916, inclusive, while performing such a service, without charge, for other industries resulted in the payment of charges that were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation, based upon the cost to complainant of performing the service in question, is asked.

Complainant's plant covers an area of about 46 acres and its trackage aggregates approximately 5 miles. It owns two locomotives, only one of which is kept in operation, and six freight cars. The Lake Shore & Michigan Southern Railway Company, now the New York Central Railroad Company, the Pennsylvania Company, and the Erie Railroad Company have track connections with complainant's plant. The service performed by complainant for the two first-named carriers consists in taking the empties from the interchange tracks of said carriers, a short distance outside of complainant's plant inclosure, and placing them at some point within the inclosure for loading, and in taking the loaded cars from the plant to

the interchange tracks. These interchange tracks are owned by the carriers. The service in connection with the Erie is similar, but the interchange tracks, which are located outside of the plant inclosure, are owned by complainant although they are on the carrier's right of way. The distance the cars are switched varies and could not be stated definitely at the hearing. Apparently they are switched only very short distances outside of the plant inclosure. The cars are placed at various points in the inclosure but only one placement within the plant is involved in each instance. The commodities received and shipped consist principally of iron, iron ore, pig iron, steel, castings, coal, coke, sand, limestone, and slag.

Complainant has performed the spotting service for approximately 33 years, with the exception of a short period prior to November 28, 1905, during which the carriers performed that service. For a portion of the period prior to that date complainant received no allowance for the service. On November 28, 1905, a contract was entered into between complainant and defendants, providing for an allowance to the former, based upon the actual cost of the switching service, on all cars whether moving in interstate or intrastate commerce or intramill switching. The contract enumerated the factors to be considered in arriving at the cost and provided that such cost should be prorated between the three carriers and complainant in the proportion that the cars handled for each of them was to the total number of cars handled. The average cost per car as arrived at under the contract is not definitely stated, but appears to be about 90 cents. Complainant's representative testified that he considered the actual cost was considerably more than that allowed by the contract, but the amount claimed by complainant is computed in accordance with the terms of the contract and there is no dispute as to it.

The terms of the contract were complied with until April 1, 1914. Shortly before that date defendants jointly notified complainant that the practices contemplated under the contract had been declared unlawful by us in the *Industrial Railways Case*, 29 I. C. C., 212, and that on and after April 1, 1914, they would make no allowance for the switching service, but stated that this action was taken subject to the recognition by the carriers of complainant's legal rights under the agreement. Thereafter complainant continued to perform the service and kept a record of its actual cost just as if the contract were still in effect. Following *Car Spotting Charges*, 34 I. C. C., 609, defendants, in tariffs effective May 8, 1916, restored the allowance to complainant on approximately the same basis as existed prior to April 1, 1914.

Sharon is in the Shenango and Mahoning valleys rate district, in which are located numerous blast furnaces or steel industries, many  
47 I. C. C.

of which are served by defendants' lines. At practically every one of these industries it was the practice of the carriers to either perform the service of spotting the cars within the plant inclosure without charge therefor, in addition to the line-haul rates, which were the Mahoning and Shenango valleys district rates, or to make an allowance to the industry for the service. It appears that the conditions and the spotting service at these other industries were similar to those at complainant's plant. On April 1, 1914, defendants discontinued making an allowance to those industries in the valleys which did the spotting themselves. Defendants also filed tariffs to become effective May 27, 1914, proposing a charge of 5½ cents per ton for the service when performed by the carrier. These tariffs were suspended by us and later canceled, as a result of which defendants performed a spotting service without charge for complainant's competitors after April 1, 1914. Since May 8, 1916, at all steel industries throughout the Shenango and Mahoning valleys served by them, defendants have either performed the spotting service themselves without additional charge or have compensated the industry therefor. There is direct competition between complainant and such other mills, and the price which complainant can obtain for its pig iron is fixed by the competition. The additional expense imposed upon complainant had to be absorbed by it in the cost of production.

The situation here presented is very similar to that in *Pittsburgh Steel Co. v. P. & L. E. R. R. Co.*, 39 I. C. C., 312, and *Buffalo Union Furnace Co. v. L. S. & M. S. Ry. Co.*, 21 I. C. C., 620; 44 I. C. C., 267. In the latter case we found that the defendants had unduly preferred the Cleveland Furnace Company, located at Cleveland, Ohio, by making allowances to the Cuyahoga Valley Railroad Company for switching and spotting services, while refusing such allowances to complainant railroad company, thereby subjecting complainant furnace company to undue prejudice, in violation of section 3 of the act, and awarded reparation upon the basis of the cost of the interchange switching service performed by complainant railroad company.

Complainant includes in its claim the expense incurred in switching empty cars to be loaded with slag and outbound cars loaded with that commodity. This slag is a waste product of complainant's plant which, prior to July 28, 1915, was hauled by the carriers without charge. On that date, following *Transportation and Disposal of Waste Materials*, 34 I. C. C., 337, defendants established a rate of 20 cents per ton on slag. In so far as the spotting service is concerned, the situation in the Mahoning and Shenango valleys was the same with respect to slag as with respect to other commodities. All of the slag moving to interstate points was hauled out by the Lake Shore &

Michigan Southern or its successor, the New York Central. Counsel for those carriers argues that in no event should defendants be required to pay the expense of switching cars used in the transportation of slag during the period when no charge was made for such transportation. It is maintained on behalf of complainant that the slag was not hauled free by the railroads, but that they were compensated by the use of the slag for ballast, filling, or other purposes. But in this instance the question of compensation to the carrier is immaterial. Complainant was not accorded equal treatment with its competitors and the additional expense imposed upon it had to be absorbed in the cost of production of its pig iron.

It is contended on behalf of defendants that they were under no obligation to employ complainant to perform the spotting and that complainant made no demand upon defendants to perform the service, but voluntarily continued to do the spotting itself. *General Electric Co. v. N. Y. C. & H. R. R. R. Co.*, 14 I. C. C., 237, is cited, and particularly the following language used at page 244:

Relief against a defendant must ordinarily be predicated upon his failure or refusal to do what he is legally bound to do and not upon the fact that the complainant has volunteered to do it for him.

It is admitted by complainant that it did not make formal request upon defendants to do the spotting, but it is contended that various circumstances showed that such a request would have been futile, and that complainant was therefore relieved of any obligation to demand performance of the service by defendants. At both the Cherry Valley plant of the United Iron & Steel Company, located at Leetonia, Ohio, and served by the Pennsylvania and the Erie, and the Sharon Steel Hoop Company, located at Sharon and served by the New York Central and the Erie, the situation with respect to the performance of the service by the industry and the discontinuance of compensation therefor on or about April 1, 1914, was similar to that at complainant's plant. The Cherry Valley plant put up its engine and made formal demand upon the railroads to do the spotting. The demand was refused. This was brought to complainant's attention some time in 1914. The president of the hoop company protested to the division freight agent of the New York Central at Youngstown, Ohio, and was informed that the railroad could not do the spotting, but that after the matter was adjudicated the hoop company would be reimbursed. Complainant's witness also testified that at numerous times since this controversy arose he had conferred with the local freight agent of the Pennsylvania at Sharon and a division freight agent of the New York Central, both of whom insisted that it would be unlawful for the railroads to perform the switching.



Complainant understood, and apparently correctly, that relying upon the *Industrial Railways Case, supra*, defendants took the position that it was unlawful for them to perform the spotting service at these various industries, either with their own power or through the instrumentality of the industry. Not only do the statements of defendants' agents, above referred to, indicate such a position, but the joint notice addressed by the three defendants to complainant under date of February 21, 1914, specifically stated that the practices contemplated and the relations created by the agreement of November 28, 1905, had been declared unlawful by us in the *Industrial Railways Case, supra*. In conformity with their belief that the service could not lawfully be performed by them without charge in addition to the line-haul rate, defendants filed tariffs to become effective May 27, 1914, naming a charge of 5½ cents per ton for the service. While it is true, as pointed out on behalf of defendants, that these tariffs were suspended and that if defendants had performed the service they could not have assessed the charge therefor, complainant could not know at what moment the suspension might be vacated. Dependence by complainant upon the suspension of the tariffs would, under the circumstances, have been hazardous. In view of the circumstances disclosed, we do not agree with defendant's contention that it was complainant's duty to make formal demand upon them to come in and perform the service with their own power. The law does not require the performance of a vain act.

It is also contended on behalf of defendants that they were under no legal obligation to absorb the cost of the service performed by complainant. Our disposition of the case under section 3 of the act, however, renders a consideration of this contention unnecessary, since it is beyond question that complainant was entitled to equality of treatment with its competitors similarly situated. *Buffalo Union Furnace Co. v. L. S. & M. S. Ry. Co., supra*.

We find that the failure of defendants to pay an allowance to complainant for the spotting service of cars moving in interstate commerce while performing such service themselves without additional charge for other similarly situated steel mills subjected complainant to undue prejudice and disadvantage; that complainant was thereby damaged to the extent of the cost of such service in connection with all interstate shipments delivered within two years prior to the filing date of the complaint, the cost to be computed in accordance with the terms of the contract of November 28, 1905; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing by months the items of cost in accordance

with the terms of the contract of November 28, 1905, the total number of cars spotted, the average cost per car, the number of interstate cars spotted for each defendant upon which reparation is due under our findings herein, and the amount of reparation due from each defendant, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

HARLAN, *Commissioner*, dissents.

COMMISSIONERS ATTCHISON and WOOLLEY did not participate in the disposition of this case.

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No. 4828.<sup>1</sup>

P. L. CONQUEST & SON ET AL.

v.

SEABOARD AIR LINE RAILWAY ET AL.

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PORTIONS OF FOURTH SECTION APPLICATIONS Nos.  
1573 AND 703.

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*Submitted January 10, 1914. Decided December 4, 1917.*

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1. Rates on lumber in carloads from Chester, Va., to points west of the Buffalo-Pittsburgh line in New York, Pennsylvania, Ohio, and Michigan found to have been and to be unreasonable to the extent that they exceeded or exceed by more than 1.5 cents per 100 pounds the rates contemporaneously in effect from Richmond, Va., to the same destinations.
2. Rates on lumber in carloads from Chester to points on the Buffalo-Pittsburgh line and points east thereof found to have been and to be unreasonable to the extent that they exceeded or may exceed the local rates to Richmond or to Petersburg, Va., plus the proportional rates or established specifics beyond, observing the Virginia cities rates as minima.
3. Reparation awarded.
4. Fourth section relief denied.

*H. Earlton Hanes* for complainants.

*R. Walton Moore* for Seaboard Air Line Railway; Norfolk & Western Railway Company; Richmond, Fredericksburg & Potomac Railroad Company; and Washington Southern Railway Company.

*W. S. Bronson* for Chesapeake & Ohio Railway Company.

*Charles D. Drayton* for defendants.

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<sup>1</sup>The report also embraces No. 4828 (Sub-No. 1), Same v. Same.

## REPORT OF THE COMMISSION.

## BY THE COMMISSION:

Complainants are corporations dealing in lumber at Richmond, Va. By complaints, filed April 24, 1912, and by an amendment to the complaint in No. 4828, filed September 16, 1913, they allege that the rates on lumber from Chester, Va., to points in Ohio and Michigan, hereinafter called Ohio territory, to points in New York and Pennsylvania, west of a line hereinafter called the Buffalo-Pittsburgh line, and also to points substantially on said line and to points east thereof in New York, Pennsylvania, New Jersey, and Connecticut, are unreasonable, unjustly discriminatory, and in violation of section 4 of the act. Reparation is asked and the establishment of reasonable and nondiscriminatory rates for the future. None of the claims was presented to the Commission earlier than April 15, 1912. Those portions of Seaboard Air Line Railway Fourth Section Application No. 1573 and of Atlantic Coast Line Railroad Application No. 703, in which authority is sought to continue rates on lumber from Richmond through Chester by way of Petersburg, Va., in connection with the Norfolk & Western Railway, and from Petersburg through Chester by way of Richmond and the Chesapeake & Ohio Railway or the Richmond, Fredericksburg & Potomac Railroad and connections to points in Ohio, Michigan, and Pennsylvania, lower than the rates contemporaneously applicable on lumber from Chester to the same destinations, were heard with the complaints. Rates are stated herein in cents per 100 pounds. The rates on lumber to Ohio and to certain points in Buffalo-Pittsburgh territories west of the Buffalo-Pittsburgh line from Chester were and are higher than the rates from Norfolk, Richmond, Petersburg, Va., and points on the Chesapeake & Ohio Railway between Norfolk and Richmond and points on the Norfolk & Western Railway between Norfolk and Petersburg. The rates from Chester to certain points named in the complaint were from 16 cents to 20.3 cents, while the rates from the Virginia cities and other mentioned points to the same destinations were, prior to October 1, 1915, from 16 cents to 19½ cents. The rates hereinafter shown were those in effect when the case was submitted. Although most of these rates have since been increased the adjustment has been continued in the main.

Chester is 13 miles south of Richmond and 9 miles north of Petersburg; it is served by the Seaboard Air Line and the Atlantic Coast Line, which also serve Richmond and Petersburg.

Shipments from Richmond and Petersburg to the consuming territories described may pass en route through Chester. From Petersburg by way of the direct line of the Norfolk & Western, and from Richmond, by way of the direct line of the Chesapeake & Ohio,

Chester is not intermediate to Ohio territory. Traffic to that territory from Chester must be transported over the lines of the Seaboard Air Line Railway or of the Atlantic Coast Line Railroad either to Richmond or to Petersburg, thus involving an additional service and an additional cost of handling. So far as appears in this record the Atlantic Coast Line does not serve the lumber mill at Chester from which complainants purchase or ship their lumber, and all the traffic moves out over the Seaboard.

When the complaints were filed the joint rates applicable to lumber in carloads from Chester to certain points in New Jersey, New York, Pennsylvania, and Connecticut, to which complainants made shipments, exceeded the respective aggregates of the local rate from Chester to Richmond and the proportionals or established specifics beyond. Complainants ask for the establishment of rates from Chester to Ohio and Buffalo-Pittsburgh territories not higher than the rate from the Virginia points of origin named above, and to trunk line and New England territories not in excess of the combinations of rates to Richmond and proportionals or established specifics beyond. As the carriers have agreed to adjust the rates to eastern cities and to interior eastern points, and as no justification for past departures from the established basis of rate making thereto was offered, we find that rates on lumber from Chester to points on and east of the Buffalo-Pittsburgh line in New York, Pennsylvania, New Jersey, and Connecticut in excess of the aggregates of the local rates from Chester to Richmond and the proportionals or established specifics beyond were, are, and for the future will be, unreasonable; observing, however, the Virginia cities rates as minima.

With respect to traffic to many of the points in Ohio concerned in this proceeding, the situation here presented is practically the same as that which was before us in *Randolph Lumber Co. v. S. A. L. Ry.*, 13 I. C. C., 601. In that case we held that the application of a higher rate from Chester than from Richmond or Petersburg did not violate the third section or the fourth section as it stood at that time. We also held it to be unreasonable to charge a rate of more than 17½ cents per 100 pounds on lumber from Chester to Columbus and other Ohio territory to which at that time the rate from Richmond was 16 cents, or, in other words, more than 1½ cents above the rates from Richmond.

Complainants contend that the former 16-cent rate to most of the Ohio territory was applied as a blanket from main-line points on the Chesapeake & Ohio and the Norfolk & Western between Norfolk and Lynchburg, and that Chester should be included in the blanket. In *Massie & Pierce Lumber Co. v. N. & W. Ry. Co.*, 38 I. C. C., 14, a similar contention was made in behalf of stations on  
47 I. C. C.

the Southern Railway between Richmond and Burkeville, Va. We found that there was no blanketing of rates on lumber from points in Virginia to Ohio, but that the rates were threaded along the main lines of the Chesapeake & Ohio and Norfolk & Western. In view of the full consideration given these matters in the cases cited we deem it unnecessary again to set them forth here.

There is one important feature in connection with these rates which was not considered in the cases cited above, and that is the fact that in most instances rates from Chester, an intermediate point, are higher than from Richmond or Petersburg, more distant points, in contravention of the amended fourth section. This feature was not considered in the *Randolph Lumber Co. Case*, as that was decided before the passage of the present amendment to the fourth section. It was not considered in the *Massie & Pierce Lumber Co. Case*, as the allegations of violation of the fourth section were withdrawn from the petitions by consent of the parties at the hearing. In that case we said:

What is said in this report, therefore, is not intended in any wise to affect questions presented by the applications of defendants now on file for relief under the fourth section.

The carriers' fourth section applications covering this situation have now been heard and submitted in this proceeding, and must be considered in their relation to these complaints.

Some of the fourth section departures that existed at the time of the hearing have been removed, while as to others the discrimination has been reduced. Many still remain and occur, generally speaking, in the rates to points west of the Buffalo-Pittsburgh line, and north and west of the Ohio River. Typical examples of these departures are shown in the following table of present rates by way of the Atlantic Coast Line from Chester and Petersburg to representative points of destination concerned in this proceeding:

To—	Delivering line.	From Chester.	From Petersburg.
.....	B. & O.....	17.5	17.3
.....	L. S. & M. S.....	17.5	17.3
.....	B. E. & P.....	16	17.3
.....	B. & O.....	17.5	17.3
.....	B. & L. E.....	17.3	17.3
.....	B. & O.....	16.3	17.3
.....	do.....	16	17.3
.....	B. & O. S. W.....	17.5	17.3
.....	C. H. & D.....	15.3	17
do.....	B. & O.....	17.5	17.3

It will be observed from this table that there is no definite relation between rates from Chester and Petersburg, and the same is true of Richmond. In some cases rates are lower from Chester than

from Petersburg, in others the same, while in still other cases they are higher. As a general rule it would appear that rates to Pittsburgh and points south thereof and east of the Ohio River are not higher from Chester than from Petersburg, but to points west and north of the Ohio River they are higher from Chester than from Petersburg, the excesses apparently becoming greater as the distance increases. The carriers' justification for charging higher rates from Chester than from Richmond and Petersburg is based principally upon the difference between the location of these three points. It is pointed out that Richmond and Petersburg are on the main lines of the Chesapeake & Ohio and the Norfolk & Western, respectively, which operate trunk lines between points in central freight association territory and the Virginia cities, while Chester is on the main lines of the Seaboard Air Line and Atlantic Coast Line running south from Richmond through Petersburg at right angles to the main lines of the Norfolk & Western and Chesapeake & Ohio. It was asserted that the rates applied from Richmond over routes through Petersburg are made to meet the competition of more direct routes formed by the Chesapeake & Ohio and its connections, while the rates from Petersburg over routes operating through Richmond are made to meet the competition of the Norfolk & Western and its connections. Reference was also made to the basis upon which rates generally have been established between Petersburg and Richmond and other Virginia cities, on the one hand, and central freight association territory, on the other, with relation to the rates to and from Baltimore, and it is contended that the rates established from the Virginia cities on this basis are abnormally low. Also that the local rate on lumber from Chester to Petersburg and Richmond, which is 2.3 cents, and lower than rates for similar distances approved by the Virginia Corporation Commission, is a very low rate, and as the rates from Chester do not exceed the combination of these two components, that is, the local rate from Chester to Richmond or Petersburg plus the rate from Petersburg or Richmond, the rates from Chester are not unreasonable.

It is evident that the lines seeking relief must meet the rates of competing lines from Richmond and Petersburg if they expect to participate in competitive traffic from those points. We are not authorized to grant relief from the fourth section except in special cases, and we have held that such a special case is present in a situation of this kind only when the line seeking such relief is at a disadvantage in meeting the competition of a rival line. In *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, we said:

The fundamental reason, however, for granting relief to any line at a given point is the meeting at that point of the competition of other carriers, against which competition the petitioner is at a disadvantage.



The record in this case contains little evidence in respect to the disadvantages of the lines seeking relief. There is some intimation that the lines of some of the applicants are circuitous, but the record does not show the extent or degree of circuitry, nor that it is sufficient to justify relief from the fourth section. It is clear that one of the routes, that from Petersburg via Richmond and the Richmond, Fredericksburg & Potomac and its connections through Washington, is the direct route to a large part of the territory of destination, and there is clearly no reason why rates from Chester over this route should be higher than the rates from Petersburg.

The carriers laid stress upon the fact that Chester is not situated on the lines of the Norfolk & Western and Chesapeake & Ohio, and that transportation from that point necessitates hauling the traffic over one more line than does the movement of traffic from Richmond or Petersburg. It does not appear that this is a disadvantage of such a substantial character as to warrant relief in this instance. Under all the circumstances we are of opinion that sufficient justification has not been shown for continuing lower rates from Richmond or Petersburg to points in Pennsylvania, Ohio, and Michigan over the routes under consideration in this proceeding than are contemporaneously maintained from Chester. Fourth section relief to continue this adjustment will be denied.

We express no opinion as to the absolute measure of the rates that may be established in readjusting rates to conform to our findings under the fourth section. All that we hold upon this feature of the case is that defendants have not justified the continuance of higher rates from Chester than from Richmond or Petersburg over routes by which Chester is intermediate to the said points, and that rates from these points should be revised to conform to the provisions of the fourth section. Following the decision in the *Randolph Lumber Co. Case, supra*, wherein we held in effect that rates from Chester to Ohio territory were unreasonable to the extent that they exceeded the rates from Richmond by more than 1.5 cents, we are of opinion and find that rates heretofore applied, or that may be applied pending this readjustment, from Chester to points of destination in New York, Pennsylvania, Ohio, and Michigan west of the Buffalo-Pittsburgh line were and are unreasonable to the extent that they exceeded or may exceed the rates from Richmond to the same destinations by more than 1.5 cents per 100 pounds. In view of the revision which will be required in rates to points in Ohio, Pennsylvania, and Michigan to conform with our findings herein under the fourth section, no order will be entered as to the rates to be maintained for the future.

We further find that the rates on lumber to points on the Buffalo-Pittsburgh line and points east thereof from Chester were, are,  
47 I. C. C.

and for the future will be, unreasonable to the extent that they exceeded or may exceed the local rate from Chester to Richmond or Petersburg plus the proportional rates or established specifics beyond, observing the rates from the Virginia cities as minima. We further find that complainants made numerous shipments of lumber from Chester to points in Ohio territory west of the Buffalo-Pittsburgh line and to points in New Jersey, New York, Pennsylvania, and Connecticut, and paid and bore the charges thereon at the rates herein found unreasonable; that they were damaged to the extent that the charges collected exceeded the charges that would have accrued on the basis of the rates herein found reasonable; and that they are entitled to reparation, with interest, on shipments not barred by the statute of limitations. The amount of reparation due can not be determined on this record and complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

Appropriate orders will be entered.

COMMISSIONERS AITCHISON and ANDERSON did not participate in the disposition of this case.

No. 8912.<sup>1</sup>  
**ALABAMA PACKING COMPANY ET AL.**  
*v.*  
**LOUISVILLE & NASHVILLE RAILROAD COMPANY**  
**ET AL.**

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*Submitted September 27, 1917. Decided November 30, 1917.*

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Upon complaints which allege that the rates on live stock from East St. Louis, Ill., from Ohio River crossings, and from points in Kentucky and Tennessee to Birmingham and Montgomery, Ala., violate the provisions of sections 1, 3, and 4 of the act to regulate commerce, the defense admitting violations of sections 3 and 4 and offering to establish rates in conformity with the requirements of those sections; *Held*:

1. That the present rates are higher than the aggregates of the intermediate rates subject to the act and, to that extent, unreasonable.
2. That the defendants should be permitted to establish the reasonable rates suggested by them at the hearing, with certain modifications thereof pointed out in the report.
3. Particular rates condemned as unreasonable. Reparation awarded.
4. Relief from the provisions of the fourth section denied.

*John D. Patterson, jr.*, for complainants.

*W. A. Northcutt* and *William Burger* for defendants.

**REPORT OF THE COMMISSION.**

**DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.**

These cases were consolidated for hearing and disposition. In No. 8912 the rates on horses and mules, cattle and hogs, charged by the Louisville & Nashville Railroad Company from points on its lines in Kentucky and Tennessee to Birmingham, Ala., are brought in issue. In No. 8985 the rates of the defendants on horses and mules from St. Louis, Mo., and East St. Louis, Ill.; from points on the line of the Louisville & Nashville Railroad between St. Louis and Evansville, Ind.; from certain Ohio River crossings; and from points in Kentucky and Tennessee to Montgomery, Ala., are attacked. Both complaints, as amended, allege that the rates charged are unreasonable; that they subject dealers in live stock at Birming-

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<sup>1</sup>The report also embraces No. 8985, *Steagall & Lightfoot et al. v. Louisville & Nashville Railroad Company et al.*, and portions of Fourth Section Applications No. 1952, filed by the Louisville & Nashville Railroad Company, and No. 2138, filed by the Mobile & Ohio Railroad Company.

ham and Montgomery to undue prejudice and disadvantage; and that these rates violate the provisions of the fourth section of the act. Reparation on past shipments is requested in both complaints. Defendants' applications asking for relief from the provisions of the fourth section of the act so far as this traffic is concerned were set for hearing with these complaints.

The situation disclosed by the record is unusual in that the rates on live stock from the points named to Birmingham and Montgomery are higher than to local stations on the Louisville & Nashville Railroad in the immediate vicinity of those cities. Birmingham and Montgomery are competitive or basing points and, in the past, rates to such points east of the Mississippi and south of the Ohio rivers generally have been lower than to noncompetitive points; and this was so whether such local points, with respect to the points of origin, were intermediate to the basing points or more distant. Here the rate adjustment shows a reversal of form and live-stock rates to these basing points are higher than to near-by local points. For this anomaly in rate making the defendants ask no future relief. These complaints brought the matter sharply to their attention and, without attempting to defend such a situation for the future, they have offered a rectification and readjustment of all their live-stock rates.

Although the Commission's reports and orders in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and 32 I. C. C., 61, were issued in April and October, 1914, defendants' rates on live stock have not yet been brought into conformity therewith; this, as they say, is owing to the volume of work necessary on commodity rates generally. The record shows that the rates on live stock to Birmingham and to Montgomery exceed the rates to stations beyond those points; that the rates to those cities are in excess of the aggregates of interstate rates to and from intermediate points, and therefore that these rates involve departures from both clauses of the fourth section. In many instances rates from the points of origin named to Birmingham and to Montgomery exceed the rates northbound from Montgomery and Birmingham to the same points, and live-stock rates to Birmingham and Montgomery are generally in excess of the mileage scale applicable between local stations.

The Louisville & Nashville and the Mobile & Ohio railroads are the only carriers having line hauls on this traffic named as defendants. The other defendants are named solely because they may or do act as terminal switching lines. The Mobile & Ohio is named as defendant in the Montgomery case; little was said about its rates; it is involved only in so far as the rates from St. Louis and East St. Louis to Montgomery are concerned; and, as the distance by its line

to Montgomery is but 8 miles shorter than via the Louisville & Nashville Railroad, we need not pay particular attention to it. The Louisville & Nashville Railroad Company was the only defendant which appeared at the hearing and as the complaints are primarily directed to its rates, it will be referred to as the defendant.

The defendant asserts that its live-stock rates have been, and are, reasonable; nevertheless, in view of the malalignment of these rates, it offers to readjust them throughout the southeast and to cure all fourth section departures now existing therein. The result of the hearing is, as stated in complainants' brief, that the only questions now before the Commission are: (1) Whether the present and proposed rates are just and reasonable; and (2) whether the rate of \$43 per car on cattle and hogs from Nashville, Tenn., to Birmingham violates sections 1 and 3.

Complainants do not waive their claims for reparation; but they did not prove damages under section 3; and, as the elimination of fourth section departures will cure also the violations of section 3 alleged, examination of the present and proposed rates will be mainly to determine whether or not they are reasonable.

Rates on horses and mules from the points named to Birmingham and Montgomery are in practically all cases higher than rates published to apply in the opposite direction. The lower northbound rates are paper rates, however, as horses and mules are seldom, or never, shipped from Alabama points northward. The mileage scale of rates now in effect, and in accordance with which specific rates to local stations are made, is also upon a lower basis than the rates of which complaint is made. As this mileage scale will be sufficiently set forth in the specific rates to local points hereinafter considered and as northbound rates are not only paper rates but are published substantially on the basis of the mileage scale, neither the northbound nor the mileage rates will be here discussed. The present and proposed rates are shown in the following tables:

*Rates per car on horses and mules to Birmingham, Ala.*

From—	Distance.	Rates.		Revenue per car-mile.	
		Present.	Proposed.	Present.	Proposed.
	<i>Miles.</i>			<i>Cents.</i>	<i>Cents.</i>
Louisville, Ky.....	394	\$78	\$78	19.8	19.8
Bowling Green, Ky.....	281	76	70	27	24.9
Bardstown, Ky.....	389	83	83	21.3	21.3
Franklin, Ky.....	260	71	68	27.3	26.2
Gallatin, Tenn.....	235	63	63	26.8	26.8
Nashville, Tenn.....	208	53	53	25.5	25.5
Columbia, Tenn.....	162	40	40	24.7	24.7

Rates per car on cattle and hogs from points in Tennessee to Birmingham, Ala.

From—	Distance.	Rates.		Revenue per car-mile on cattle.	
		Present.	Proposed.	Present.	Proposed.
	Miles.			Cents.	Cents.
Nashville.....	208	\$43	\$43	20.7	20.7
Overton.....	202	<sup>1</sup> 38	43	18.8	21.3
Brentwood.....	198	<sup>1</sup> 38	41	19.2	20.7
Franklin.....	189	40	39	21.1	20.7
Pulaski.....	128	40	35	31.2	27.3
Cornersville.....	146	40	35	24.4	23.9
Harwell.....	120	<sup>2</sup> 38	35	31.7	29.2
Prospect.....	117	<sup>3</sup> 35	<sup>4</sup> 35	29.9	29.9

<sup>1</sup> Rate on hogs \$1 higher.  
<sup>2</sup> Rate on hogs \$2 higher.

<sup>3</sup> Rate on hogs \$5 higher.  
<sup>4</sup> Rate on hogs \$1 lower.

Rates per car on horses and mules to Montgomery, Ala.

From—	Distance.	Rates.		Revenue per car-mile.	
		Present.	Proposed.	Present.	Proposed.
	Miles.			Cents.	Cents.
Louisville, Ky.....	491	\$95	\$88	19.3	17.9
Elizabethtown, Ky.....	449	95	86	21.2	19.1
Smith's Grove, Ky.....	391	95	80	24.3	20.4
Horse Cave, Ky.....	411	95	82	23.1	19.9
Woodland, Ky.....	409	95	82	23.2	20
Bowling Green, Ky.....	378	93	80	24.6	21.2
Bardstown, Ky.....	486	100	93	20.6	19.1
Franklin, Ky.....	357	88	78	24.6	21.8
Gallatin, Tenn.....	332	80	73	24.1	21.9
Nashville, Tenn.....	306	70	63	22.9	20.7
St. Louis, Mo.....	627	120	113	19.1	18
Belleville, Ill.....	610	120	113	19.7	18.7
Evansville, Ind.....	462	95	88	20.6	19

The defendant said that the bases of the proposed rates are to be found in the reports of the Commission in *Atlanta Freight Bureau Case*, 29 I. C. C., 476, 487, and in *Fourth Section Violations in the Southeast, supra*. In the report in the Atlanta case the Commission said:

Nothing in this report should be construed as prescribing any fixed scale of rates on classes or commodities from Cincinnati to Atlanta. In compliance with the forthcoming report in the fourth section cases it may be necessary to make some changes in the rates from Cincinnati to Atlanta and to Birmingham. Such changes should be made having in mind the necessity for a parity in the rates from and through Cincinnati to the two points of destination named.

An order will be entered requiring the defendants, for a period of two years, not to charge higher rates from Cincinnati to Atlanta than they contemporaneously charge on the same kind of traffic from Cincinnati to Birmingham.

The present rates on horses and mules from Cincinnati are \$95 per car to Atlanta and \$88 per car to Birmingham. The rate to Birmingham will not be changed, but the rate to Atlanta will be



reduced to \$88. This reduction in the rate from Cincinnati to Atlanta will be reflected through all Ohio and upper Mississippi river crossings by a similar reduction of \$7 per car, and will compel a reduction of \$7 or more per car in the rates on horses and mules to Montgomery from the points named in the complaint. The defendant calls attention to the fact that Atlanta is the largest horse and mule market in the southeast, and that the reductions on this commodity to Atlanta and related points will overbalance the increases in rates to intermediate points. The rates to intermediate points are, in many instances, merely paper rates, and increases to such points are paper increases.

The rates in issue have been in effect for about seven years, some of them for a longer period. They apply on live stock per car and many of them are practically the same as they were in 1900; they now apply, however, on larger cars and the carrier performs more services for the same amount of compensation. The present rate on horses and mules from East St. Louis to Montgomery is \$120 per car. The distance via the Louisville & Nashville Railroad from East St. Louis to Montgomery is 624 miles, and the rate yields a revenue little above 19 cents per car-mile. In view of the value of this commodity, worth more than \$4,000 per carload, and the traffic conditions south of the Ohio River, this rate does not appear to be unreasonable. The rate proposed from East St. Louis to Montgomery is \$113 per carload. The present rates on horses and mules from Louisville, Ky., are \$95 to Montgomery and \$78 to Birmingham. The rate proposed to Montgomery is \$88; no change is proposed in the rate to Birmingham. The present rates yield revenues of something over 19 cents per car-mile and do not on their face appear to be unreasonable.

In the proposed adjustment of rates the defendant, for the longer hauls, will charge \$10 less per car on cattle and hogs than on horses and mules, and \$5 less per car on sheep than on cattle and hogs. The present and proposed rates from Nashville to Birmingham are \$53 on horses and mules, \$43 on cattle and hogs, and \$38 on sheep. Complainants, satisfied generally with the proposed rates on cattle and hogs, take exception to the rate of \$43 per car from Nashville to Birmingham, and compare this rate with the rate of \$35 per car from Nashville to Louisville for a distance of 186 miles. The latter rate yields a revenue of nearly 19 cents per car-mile, or 2 cents per car-mile less than the revenue on cattle and hogs from Nashville to Birmingham. The defendant explains the adjustment of the rate from Nashville to Louisville as controlled by the rate from Nashville to Evansville, \$35 per car, the distance being 158 miles and the earnings something more than 22 cents per car-mile, and shows that the earnings per car on many articles of dead freight are as high as car

earnings on live stock, notwithstanding the fact that live stock is from four to ten times more valuable. Defendant also calls attention to the special services required of the carrier in the handling of live stock, services which are not demanded for the transportation of dead freight, and specifically points out that for the year ended June 30, 1916, although live stock formed but 1.14 per cent of the total freight handled by it, the loss and damage claims paid by it on live stock were 12.65 per cent of all the loss and damage claims paid during the same period. Defendant shows that in many instances its present and proposed rates on horses and mules are lower, and yield lower car-mile earnings, than rates on live stock between points in central freight association territory where there are considerable movements.

As against this showing, tending to establish the reasonableness of both the present and proposed rates, the complainants insist that the mileage scale of rates now in effect on the line of the Louisville & Nashville Railroad should be the measure of these rates without regard to other considerations. The mileage scale was published about 30 years ago, and is the basis for the specific rates to points in the immediate vicinity of Birmingham and Montgomery which are lower than to those two points. Comparatively little traffic has moved on these specific rates since the announcement made in the *Kanotex Case*, 34 I. C. C., 271.

The rates proposed will eliminate all fourth section departures. They produce, in the main, reductions in rates and charges to the points to which live stock actually moves. There will be a number of increased rates published, but these increased rates for the most part apply between points where there is little or no movement. Taking into consideration the facts shown in this record, that to two of the larger live-stock markets of the southeast, that is, to Atlanta and to Montgomery, there are substantial reductions proposed, the contention made by defendant that this readjustment of rates on live stock will result in decreased revenues to the carriers seems probable.

The defendants had applications on file to protect the fourth section departures herein noted. They ask no relief, however, other than that heretofore granted under *Fourth Section Violations in the Southeast, supra*.

While these rates appear not unduly high, it has been the rule of the Commission for more than 10 years to regard rates which are higher than the aggregate of intermediate rates as prima facie unreasonable. The complainants have shown that the rates on horses and mules to Birmingham and to Montgomery exceed the sums of

the local rates from points of origin to intermediate points and from such intermediate points to destinations. It will be sufficient, in illustration of this, to set forth the following table:

*Rates on horses and mules, carloads, to Montgomery, Ala., and combinations of intermediate rates, which are lower.*

From—	Miles.	Present rate.	Combinations on Jackson's Lake, Ala.		
			To Jackson's Lake.	Beyond.	Total.
Bardstown, Ky.....	486	\$100.00	\$76.00	\$5.00	\$81.00
Elizabethtown, Ky.....	449	95.00	72.00	5.00	77.00
Smith Grove, Ky.....	391	95.00	64.00	5.00	69.00
Horse Cave, Ky.....	411	95.00	64.00	5.00	69.00
Bowling Green, Ky.....	378	93.00	60.00	5.00	65.00
Franklin, Ky.....	357	88.00	56.00	5.00	61.00
Gallatin, Tenn.....	332	80.00	52.00	5.00	57.00
Nashville, Tenn.....	305	70.00	48.00	5.00	53.00
East St. Louis, Ill.....	624	120.00	(1)	(1)	105.12

<sup>1</sup> To Birkners, Ill., \$15.12; to Jackson's Lake, Ala., \$85; to Montgomery, \$5; total, \$105.12.

Rates between East St. Louis and Birkners, Ill., and between Jackson's Lake and Montgomery, Ala., are filed with this Commission.

There is no justification for a rate situation such as this; its long continuation is but an aggravation of the offense. The defendant calls attention to the former absence of complaints against its livestock rates and the record indicates a possible explanation; that is, that formerly the sums of the locals were used by shippers rather than the published through rates. However that may be, the Commission should find that the rates on live stock from the points named in the complaints to Birmingham and to Montgomery were and are unreasonable in and to the extent that they exceeded and exceed the aggregates of the intermediate rates subject to the act; that complainants made shipments as alleged and paid and bore the charges thereon upon the basis of the higher through rates and were damaged thereby; and that they are entitled to reparation. But the defendant should be permitted to readjust its rates as suggested at the hearing. The rates suggested by the defendant will be free from the vice pointed out.

Some other of the rates to Birmingham, present and proposed, appear to be open to criticism. The present rate of \$76 on horses and mules from Bowling Green is unreasonable to the extent that it exceeds the proposed rate of \$70. The present and proposed rates from Franklin, Ky., to Birmingham of \$71 and \$68 per car are unreasonable; the Commission should find that the rate should not have been, or be, in excess of \$65 per car. From Gallatin, Tenn., the present and proposed rate of \$63 per car is unreasonable to the extent that

it exceeds \$60 per car. And from Nashville, Tenn., the present and proposed rate of \$53 per car is unreasonable to the extent that it exceeds \$50 per car.

Turning now to the rates on cattle and hogs from Nashville and points south thereof to Birmingham, the finding should be that the present and proposed rates are and would be unreasonable in and to the extent that they exceed \$40 per car from Nashville, Overton, and Brentwood, \$32 from Pulaski, and \$30 from Harwell and Prospect.

With respect to the rates hereinabove found unreasonable, the Commission should find that the complainants made the shipments as alleged and paid and bore the charges thereon at the rates found unreasonable; that they have been damaged thereby and are entitled to reparation.

Complainants should prepare statements in accordance with rule V of the Rules of Practice showing shipments from the points named to Birmingham and to Montgomery which have moved within the period of two years immediately prior to the filing of the complaint and upon which reparation is due. Relief from the provisions of the fourth section of the act should be denied. The carriers should realign their rates in accordance with those proposed, modified in conformity with the findings herein made. Rates on live stock north-bound should also be corrected.

*WOOLLEY, Commissioner:*

The foregoing proposed report of the examiner was filed in the record and copies served upon the parties on September 7, 1917, under rules of procedure providing for the filing of exceptions within 20 days thereafter. Neither party has filed exceptions. Upon consideration of the record, we approve and adopt that report as the report of the Commission.

47 I. C. C.

No. 9340.  
OMAHA GRAIN EXCHANGE  
v.  
GREAT NORTHERN RAILWAY COMPANY ET AL.

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*Submitted September 9, 1917. Decided November 30, 1917.*

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Upon complaint that an operating rule of the Great Northern Railway Company to the effect that its cars will not be permitted to go beyond its rails is unjustly discriminatory against shippers of grain moving under joint rates to Omaha, Nebr., from stations on the Great Northern in South Dakota; and that such a rule is unreasonable; *Held:*

1. That the evidence fails to show that the rule complained of is unjustly discriminatory against complainants, but does show that it is unreasonable.
2. That under joint rates carriers are obligated to send shipments through promptly from point of origin to destination.
3. That no operating rule is reasonable or lawful which requires holding of grain in cars for indefinite periods of time at junction points.

*John A. Kuhn and Edward P. Smith* for complainant.  
*Sanford H. E. Freund* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

It is alleged in this complaint that defendants maintain through routes and publish joint rates on grain in carloads to Omaha, Nebr., and Council Bluffs, Iowa, from stations on a line of the Great Northern Railway Company, hereinafter called the Great Northern, in South Dakota; that, notwithstanding, the defendants refuse to receive grain for shipment to Omaha or Council Bluffs at South Dakota stations and will not furnish cars or issue through bills of lading for such transportation; that by reason thereof receivers of grain at Omaha and Council Bluffs are unjustly discriminated against; and that defendants' action is unreasonable and unlawful in violation of sections 1 and 3 of the act.

Joint rates on grain in carloads to Omaha and Council Bluffs from stations in South Dakota on the Great Northern are now in effect, and have been continuously maintained since October 25, 1909, in schedules of the Chicago, Burlington & Quincy Railroad Company, hereinafter called the Burlington, properly concurred in by the Great Northern.

Although Council Bluffs is mentioned in the complaint, the evidence relates wholly to Omaha, and reference hereinafter will be made to the latter point only. Both take the same rates, and what is said with respect to Omaha applies also to Council Bluffs.

The line of the Great Northern in South Dakota, from stations on which joint rates are published to Omaha, extends northerly from Yankton to Garretson, a distance of 84.6 miles. From Garretson a line extends south to Sioux City, Iowa, the southern terminus of the Great Northern, a distance of 96.8 miles, and northerly to Minneapolis, a distance of 219.6 miles. Joint rates are also published to Omaha from a few stations in Minnesota on the line leading from Garretson to Minneapolis. The distance to Omaha from Sioux City via the Burlington is 139 miles.

A buyer for a grain commission firm in Omaha testified that in November, 1916, he visited elevator operators on the line of the Great Northern in South Dakota and was advised by them that should that carrier let its cars go south of Sioux City shipments of grain to Omaha would be made by them, but that they could not make such shipments because the Great Northern would not permit its cars to go to that market. A grain commission merchant of Sioux City testified that in the fall of 1916 he frequently desired to ship grain to Omaha, but he was unable to do so because the Great Northern refused to permit its cars to go south of Sioux City. He stated that the Great Northern at Sioux City would not allow its cars to go off its line and refused to reload the grain into other cars at its expense, and that claims had been filed for the expenditures he had made in unloading and reloading. He stated that he had cars of grain at Minnesota Transfer for periods ranging from 30 to 90 days waiting to be transferred from Great Northern cars to cars of other lines.

Another commission merchant of Sioux City testified that after the middle of October, 1916, he found it very difficult to get cars of grain from South Dakota stations to Omaha; that he did make such shipments up to about the middle of November, 1916; that he was advised by the Great Northern officials in Sioux City they would not allow their cars to go to Omaha; that he had grain in Great Northern cars at Viborg, Hill, and Volin, S. Dak., billed to Sioux City; that after the cars arrived at Sioux City he attempted to divert them to Omaha in accordance with tariff provisions; that the Great Northern refused to divert the cars or to transfer the grain; that he paid \$15 to \$20 per car to transfer the grain to foreign equipment, and for demurrage; that he had presented bills to the Great Northern for the amounts; and that cars were held in Sioux City from 6 to 10 days before he could secure cars in which to transfer the contents.



He further testified that during the fall of 1916 he shipped grain from South Dakota points to Minneapolis because he could not get cars for Omaha, and that during the time the Omaha price for the grain he shipped was higher than the Minneapolis price.

The following letter to a grain company at Sioux Falls, S. Dak., signed by a general freight agent of the Great Northern, was submitted in evidence:

GENTLEMEN: Referring to yours of October 11, and returning bill of lading covering G. N. car 13732, oats from Viborg, S. Dak., October 10, billed to Sioux City, which you requested diverted to Atchison, Kans., beg to advise we have received positive instructions from our traffic department forbidding us from diverting Great Northern cars off our system, and for that reason are unable to follow same.

In April, 1913, this complainant filed a complaint with this Commission against these defendants, based on the refusal of the Great Northern to allow cars of grain to move through to Omaha from the points in South Dakota here involved. The case was set for hearing; but upon assurance from the then president of the Great Northern and vice president of the Burlington that the carriers proposed to and would furnish, without discrimination, under joint through tariffs referred to in the complaint, cars for shipment of grain from stations on the Great Northern in South Dakota to Omaha via the Burlington, the complainant requested that the proceeding be dismissed. It is shown that from the summer of 1913 up to the fall of 1916 shippers of grain had no difficulty in making shipments to Omaha from points in South Dakota.

The defendants show that on the 15th of October, 1916, the Great Northern issued an order that none of its cars would be permitted to go off its lines.

The assistant general superintendent of the Great Northern testified that the Great Northern had issued no orders or instructions with regard to its equipment other than restrictions that have been placed from time to time in certain seasons of the year, in order to conserve its equipment and handle business local to its lines, for the reason that cars once leaving its rails are "awful hard to get back." He stated that no orders were given applicable to Omaha that were not applicable to any other point not served directly by the Great Northern; that it was found necessary to restrict the movement of Great Northern cars to its own rails to a greater extent last fall and winter than ever before on account of the unprecedented congestion of traffic in the east; that the equipment used to haul grain was also used to haul coal for domestic purposes from the head of the lakes to a very large territory that is without any other kind of fuel; and that in the fall months of each year the Great Northern has always held its box cars at home so far as possible in order to try and get

coal into a country that is subject to severe winters. He asserted that 90 per cent of the business of the Great Northern originates along its own rails; that a very large territory is dependent on it for cars and other transportation facilities; that the Great Northern has never been successful in obtaining cars from its connections in anywhere near the number necessary to supplement its own in times of shortage; and that it can only take care of its local territory by keeping its own cars at home during periods when local conditions require the use thereof.

Under the order here complained of he stated that when a shipper from a South Dakota station on the Great Northern desired to ship a car of grain through to Omaha an effort is made to secure a foreign car for such transportation; and that if a shipper has loaded Great Northern cars and tenders through bills of lading to Omaha the through billing is issued only on condition that the grain is subject to transfer to foreign equipment at Sioux City; that the Great Northern is dependent on its connections for cars in which to transport such traffic south of Sioux City; and that in the event no foreign cars are available at Sioux City the grain is held in Great Northern cars until suitable foreign cars are secured. He further stated that in case cars billed to Omaha are held under load at Sioux City because of inability to secure foreign equipment to which the contents might be transferred, the Great Northern recognizes that it has no right to charge a shipper for the detention, or the expense of transfer; that if such charges had been billed against shippers it was due to a mistake; and that all charges of that nature that had been paid would be promptly refunded.

Counsel for defendants stated that the Great Northern issues through bills of lading from all points of origin on its lines to all points to which joint rates are published; but it does not undertake, when such bills are issued, to move the shipments through in Great Northern cars; that the Great Northern will haul the cars to the end of its rails and will transfer contents into other cars at its own expense; and that it will not be responsible for delays in the transfer.

The complainant produced no witnesses who had personal knowledge that the Great Northern had refused to accept through bills of lading to Omaha from South Dakota points. It does appear from the evidence that the Great Northern refused to divert cars billed to Sioux City from South Dakota stations to Omaha, although its published schedules provide for such diversion. It is further established of record that as a practical matter there is no such thing as a through movement of grain in carloads to Omaha from South Dakota stations. Grain shippers sent their grain from South Dakota to Minneapolis in preference to Omaha because of the interruption of

the through movement at Sioux City, and the loss of grain at that point due to the transfer from one car to another. Cars of grain could and did move to Minneapolis in Great Northern cars without transfer en route because the cars did not leave Great Northern rails. Shipments to Omaha were subjected to delays at Sioux City to an extent that seriously interfered with the free movement of the traffic.

It is shown by complainant that Great Northern cars loaded with grain moved to Minneapolis or Minnesota Transfer and were allowed to go through to Milwaukee, Wis., and other billed destinations off the rails of the Great Northern during the period shipments were held at Sioux City. The assistant general superintendent of the Great Northern testified that during the fall months of 1916 there was an accumulation of grain in cars at Minneapolis that had been billed there and then diverted to points beyond; that severe congestion resulted from holding the cars to await foreign equipment; that when cars had been held an unreasonable time they were allowed to go through to destination in order to clear the congestion; that with respect to other cars disposition orders were given at an elevator within the switching limits of Minneapolis, or the cars were switched to connections for delivery to the elevator; that the cars were taken from the switch connections where the Great Northern had no control of them and they were there diverted; and that there were cases where cars were unloaded in elevators and immediately reloaded with grain and billed to points off the line of the Great Northern. The purpose of the complainant in showing that Great Northern cars loaded with grain billed to Minneapolis, or billed through to destinations beyond Minneapolis, were either diverted or allowed to go through to Milwaukee or other points off the rails of the Great Northern, was to support its allegation of unjust discrimination against receivers and shippers of grain at Omaha. There is no allegation in the complaint that Omaha as a grain market is unjustly discriminated against, or that the owners of the grain at points of origin were unduly prejudiced because they found difficulty in making shipments to Omaha. The witnesses of complainant were representatives of commission merchants at Omaha and Sioux City. Their evidence does not show that they were unjustly discriminated against within the meaning of the act because of the order of the Great Northern complained of.

It is contended by defendants that the insistence by the Great Northern that grain shall be transferred from its cars at the end of its rails into foreign cars is not the same thing as a refusal to accept the shipments. This may be conceded, but the requirement that grain from South Dakota shall be held indefinitely at Sioux City to await the ability of the Great Northern to secure suitable foreign

cars is an unreasonable interference with the free through movement of freight. At common law it was the duty of carriers to transport freight with reasonable dispatch from point of origin to destination. It is doubtful if at common law a carrier was obligated in this regard beyond its own rails. There can be no doubt, however, under the act to regulate commerce that the obligation upon all carriers parties to through routes and joint rates is to move traffic through with promptness. Section 1 of the act makes it the duty of common carriers to establish through routes, to provide reasonable facilities for operating them, and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein for the operation of the through routes. Section 1 of the act further provides that—

And it is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe, and enforce just and reasonable \* \* \* regulations and practices affecting \* \* \* matters relating to or connected with the receiving, handling, transporting, storage, and delivery of property subject to the provisions of this act which may be necessary or proper to secure the safe and prompt receipt, handling, transporting, and delivery of property subject to the provisions of this act upon just and reasonable terms, and every such unjust and unreasonable \* \* \* regulation and practice with reference to commerce between the states and with foreign countries is prohibited and declared to be unlawful.

The language is clear, and the intent of Congress is plain, that the commerce of the country shall flow freely in established channels, without unnecessary hindrance, embarrassment, or delay. Conference Ruling No. 59, Bulletin No. 6, is as follows:

Where connecting lines have united in publishing a joint through rate between two points, it is the sense of the Commission that it is the duty of the carriers in the route to provide the car and permit it to go through to destination or to transfer the property en route to another car at their own expense.

There is nothing in this rule that is authority for carriers to hold traffic in cars en route for indefinite periods. The rule is to be read and considered in connection with the provisions of law, which require the prompt transportation and delivery of property.

Is the practice of the Great Northern, under its rule or regulation, which does not permit its cars to go through to Omaha when loaded with grain shipped from South Dakota points, notwithstanding it is a party to joint rates on the traffic, just and reasonable?

A somewhat similar situation was considered by the Commission in *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, 22 I. C. C., 39. In that case the Illinois Central Railroad Company issued a rule or regulation in November, 1910, that until further notice its cars and those of the Indianapolis Southern, a subsidiary line, must not be loaded with coal at mines located on lines of the Illinois Central and the Indianapolis Southern when the coal was destined to points on

or reached by certain named railroads, although there were joint rates published from the points of origin to destinations. The contention of the complainant was that whenever a carrier has made through routes and joint rates with other railroads it must under all circumstances furnish the equipment demanded by its shippers, and that the regulation was unlawful. The defendant contended that in justice to the communities dependent immediately upon it for their winter's supply of coal the regulation was a necessity; that refusal to permit its own cars to leave its own tracks was made necessary by the confiscation of its cars by other railroads; and that it would have been neglectful of its primary obligation to its local business had it permitted the equipment on its road to be still further drawn upon by foreign railroads which could not be induced to return the same at a time of car shortage. In that case the regulation of the Illinois Central was condemned as unlawful, and at page 44 the Commission said:

There can be little doubt as to the duty of the carriers under the present act. The commerce of the country is regarded as national, not local, and the railroads are required to serve the routes which they have established, or which they may be required to establish, in connection with other carriers, without respect to the fact that this may carry their equipment beyond their lines.

and at page 49 it is said that—

The carriers must make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used upon their through routes and for the operation of such through routes (sec. 1), and where they have failed in this respect and "are in violation of any of the provisions of this act" the Commission is empowered to determine the individual or joint regulation or practice that is just, fair, and reasonable (sec. 15).

Under the joint rates established and maintained by these defendants, shippers of grain at South Dakota points are entitled to send their shipments through to Omaha. The defendants can not lawfully hold such shipments indefinitely at Sioux City, or any other intermediate point, to await foreign cars to which the contents may be transferred. This record shows that cars of grain were held at least 10 days at Sioux City for this purpose. The Great Northern claims the right to hold cars at Sioux City indefinitely. No rule or practice may lawfully operate to make nugatory the obligation that rests upon the Great Northern and Burlington to move traffic promptly over the through route they have established and under the joint rates they publish.

In times of severe shortage of cars such as occurred last fall and winter, what is to be said of a rule or regulation that permits or requires the detention of cars at terminal points on the Great Northern from 10 to 90 days? The general demand is to keep cars moving to serve the commerce of the nation. Carriers are obligated to make such

arrangements with each other, under joint rates, as will insure prompt exchange of equipment at junction points. The movement of traffic through from point of origin to destination may not be lawfully impeded or interrupted because such arrangements have not been made, or because connecting carriers fail to observe what the initial carrier may consider to be its due in the way of car exchange. Under the recent amendment to section 1 of the act, giving this Commission jurisdiction of car service, that is, the movement, distribution, exchange, interchange, and return of cars used in the transportation of property, the Commission is clothed with ample authority, should the occasion require, to protect the Great Northern against any unfair practices of its connections in the matter of interchange of cars at Sioux City.

Under the facts and circumstances appearing of record, the Commission should find that the rule of the Great Northern to the effect that it will not permit its cars loaded with grain at South Dakota stations to move through to Omaha under its published joint rates with the Burlington is unreasonable and unjust and may not be maintained for the future.

*WOOLLEY, Commissioner:*

The foregoing proposed report of the examiner was filed in the record and served upon the parties on August 20, 1917, under rules of procedure providing for the filing of exceptions within 20 days thereafter. Neither party has filed exceptions. Upon consideration of the record we approve and adopt that report as the report of the Commission. An appropriate order will be entered.



INVESTIGATION AND SUSPENSION DOCKET No. 1099.

LUMBER TO SIOUX CITY, IOWA.

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*Submitted November 3, 1917. Decided December 15, 1917.*

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Proposed increased rates on yellow-pine lumber, in carloads, from group 5, in the southern yellow-pine blanket, and intermediate group 8 to Sioux City and Morningside, Iowa, found not justified.

*Fred G. Wright, Henry G. Herbel, F. H. Moore, S. W. Moore, T. J. Norton, W. F. Dickinson, D. Upthegrove, E. T. Miller, C. S. Burg, F. H. Wood, and Thos. J. Freeman* for respondents.

*C. E. Childe* for Traffic Bureau of the Sioux City Commercial Club, protestant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

BY DIVISION 2:

By schedules, filed to take effect May 31, 1917, respondents proposed to establish increased rates on yellow-pine lumber, in carloads, from points in the southern yellow-pine blanket, known as group 5, and intermediate group 8, to Sioux City and Morningside, Iowa, the latter point being within the city limits of the former, on the Chicago, Milwaukee & St. Paul Railway. As these points take the same rates, Sioux City only need be referred to. Upon protests by the Traffic Bureau of the Sioux City Commercial Club and the Southern Hardwood Traffic Association, of Memphis, Tenn., the schedules were suspended until March 28, 1918. Rates are stated in cents per 100 pounds.

The yellow-pine blanket comprising group 5 lies between the Arkansas River on the north, the Mississippi River on the east, the Gulf of Mexico on the south, and a line drawn through Kansas City, Mo., and Houston, Tex., on the west. *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 33 I. C. C., 33. Group 8 is in the northeastern part of Arkansas. From both groups to Sioux City the present rates on yellow-pine lumber are 28 cents; to Lincoln and Omaha, Nebr., and Des Moines, Iowa, embraced in what is known as the Omaha group, 26½ cents from group 5 and from 21½ cents to 23½ cents from group 8. On cypress and hardwood the rates to Sioux City are 30 cents from group 5 and 29 cents from group 8, while to the Omaha group they are 26½ cents from group 5 and from 21½ cents to 23½ cents from group 8. It is proposed to increase yellow-pine rates to Sioux City to 29½ cents from group 5 and to 29 cents from

group 8. This would increase the spread between the rates on that lumber from group 5 to Sioux City and the Omaha group from  $1\frac{1}{2}$  cents to 3 cents, while the corresponding spreads of from  $4\frac{1}{2}$  cents to  $6\frac{1}{2}$  cents in the rates from group 8 would be increased 1 cent. In respect of rates from group 5 this would restore the relationship in effect prior to the increase from 25 cents to  $26\frac{1}{2}$  cents in the rates to the Omaha group, approved in *Lumber Rates from Helena, Ark., and Other Points*, 41 I. C. C., 565. It is urged for the Sioux City protestant that the relationship of the rates is the principal issue herein.

In *Traffic Bureau of the Sioux City Commercial Club v. A. & W. Ry. Co.*, 47 I. C. C., 347, we held that the rates from the same originating groups, among others, to Sioux City, on lumber and other forest products, other than yellow pine, should not exceed the corresponding rates to Omaha by more than 2 cents per 100 pounds; and upon full consideration of all the facts of record we are of opinion that no different relationship should exist in the case of yellow-pine lumber.

We find that respondents have not justified the proposed increased rates, and an order requiring the cancellation of the suspended schedules will be entered. Respondents may establish on not less than five days' notice rates from group 5 to Sioux City and Morningside not more than 2 cents per 100 pounds higher than the corresponding rates to Omaha.

47 I. C. C.

No. 9305.  
FIDELITY COTTON OIL COMPANY ET AL  
*v.*  
ALABAMA & VICKSBURG RAILWAY COMPANY ET AL

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*Submitted November 10, 1917. Decided December 11, 1917.*

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1. A special rule of procedure, specifying the manner in which the parties may except to a report proposed by the examiner, is binding upon the parties, and the nonobservance thereof is condemned.
2. Rates on peanuts, shelled or unshelled, in carloads, from Houston, Tex., to St. Louis, Mo., Chicago, Ill., Milwaukee, Wis., Red Wing and St. Paul, Minn., Cleveland and Toledo, Ohio, Buffalo, N. Y., and points taking the same rates are not shown to be unduly prejudicial but are found unreasonable. Reasonable maximum rates prescribed for the future.

*Huggins & Kayser, J. A. Morgan, and F. A. Lallier* for complainants.

*C. S. Burg* for defendants.

*M. J. Dowlin* for Chicago, Rock Island & Gulf Railway Company and Chicago, Rock Island & Pacific Railway Company and its receiver.

*F. R. Dalzell* for Gulf, Colorado & Santa Fe Railway Company and Atchison, Topeka & Santa Fe Railway Company.

*John M. King and L. M. Hogsett* for International & Great Northern Railway Company and its receiver.

*L. M. Hogsett* for Texas & Pacific Railway Company and its receivers.

*John T. Bowe* for Trinity & Brazos Valley Railway Company and Fort Worth & Denver City Railway Company.

*Gentry Waldo* for Houston & Texas Central Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Texas & New Orleans Railroad Company; and Houston East & West Texas Railway Company.

*J. F. Garvin* for Missouri, Kansas & Texas Railway Company and its receiver, and Missouri, Kansas & Texas Railway Company of Texas and its receiver.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.  
AITCHISON, *Commissioner*:

When notice of hearing in this case was served upon the parties, they were served also with notice of the procedure that would govern.

They were notified that oral argument might be had before the presiding examiner, who would fix the time for filing briefs; that the examiner would prepare a report, containing a statement of the issues and facts, and the findings and conclusions which he thought should be made by the Commission, which would be mailed to the attorneys of record. The rule of procedure provided further:

4. Within 20 days after the mailing of the proposed report any party may file and serve, as prescribed for briefs in rule XIV of the Rules of Practice, exceptions to the examiner's proposed report and brief in support of the exceptions. Exceptions and brief may be contained in one print.

5. Exceptions to the examiner's proposed report should be specific. If exception is taken to any statement in the report reference should be made to the pages or parts of the record relied upon, and a corrected statement submitted.

6. In the absence of exceptions that are sustained or of ascertained error, the statement of the issues and of the facts proposed by the examiner will be taken by the Commission as a basis of the report.

The case was argued orally before the examiner, and complainants filed a brief. Upon consideration thereof the examiner proposed a report, which was served upon the parties. No exceptions thereto were filed by either of the parties. On oral argument before the Commission, however, counsel for defendants attacked certain statements of facts and conclusions contained in the report proposed by the examiner, and by special permission was given leave to print the argument as and for exceptions to the examiner's report. These exceptions have received our careful consideration.

The practice of submitting reports proposed by the examiner to the parties to a proceeding before the Commission is designed to afford all parties the fullest opportunity to have their cases fairly presented to the Commission and is binding upon the parties. We can not allow such a disregard of the rule to pass without comment, nor can the fact that in this instance the oral argument was permitted to take the place of the exceptions required by our rule stand as a precedent for like action in any future case in which the special rule of procedure cited is applicable.

The Fidelity Cotton Oil Company, which is engaged in buying, shelling, crushing, and marketing peanuts and peanut products at Houston, Tex., and the Chamber of Commerce of Houston are joined as complainants in this proceeding. They allege that the rates on shelled and unshelled peanuts in carloads from Houston to St. Louis, Mo., Chicago, Ill., Red Wing and St. Paul, Minn., Milwaukee, Wis., Cleveland and Toledo, Ohio, and Buffalo, N. Y., and to points taking the same rates in the rate territories in which the points named are located, are unreasonable, and, in relation to the rates from Norfolk, Va., and other Virginia cities rate points, are unduly prejudicial to Houston. The Beaumont Cotton Oil Mill

Company, of Beaumont, Tex., intervened, but was not represented at the hearing. Rates are stated herein in cents per 100 pounds.

The production of peanuts in Texas in commercial quantities is of comparatively recent growth. In 1916, 50,000 tons of peanuts were produced from an acreage of 250,000 acres, and it is estimated that the acreage was doubled in 1917. Peanuts are used in the manufacture of peanut butter, oil, meal, and cake, and salted peanuts, and as an ingredient in breakfast foods and candies. Peanuts are shipped from the farms during the period from October to December, and from the mills from October to July. Shipments from the farms are usually of the unshelled product with an average load of less than 35,000 pounds. The shelled product from the mills is packed in burlap bags, which weigh 120 pounds each; they are loaded to an average of 36,000 pounds per car, and some shipments have been loaded to 60,000 pounds. The value of shelled peanuts is 9 cents a pound in Texas and 9½ cents in Norfolk.

The rates on peanuts from Houston to Chicago, Milwaukee, Red Wing, and St. Paul, are made by arbitraries over the rate to St. Louis. To destinations east of the Indiana-Illinois state line, the rates are constructed on the basis of a proportional rate of 43 cents to St. Louis plus the local rates beyond; where the components beyond St. Louis are the fourth-class rates they were increased subsequently to the hearing as a result of our decisions in *C. F. A. Class Scale Case*, 45 I. C. C., 254, and *The Fifteen Per Cent Case*, 45 I. C. C., 303. The rates on peanuts from Norfolk to the destinations involved are commodity rates and no change has been made in these rates since the hearing. The present rates on peanuts from Houston and Norfolk to representative destinations with the distances and revenue per ton-mile are shown in the table following:

To—	From Houston, Tex.			From Norfolk, Va.		
	Miles.	Rate.	Revenue per ton-mile.	Miles.	Rate.	Revenue per ton-mile.
		<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
St. Louis, Mo.....	783	50	1.277	1,012	41	0.810
Chicago, Ill.....	1,067	57	1.068	960	34.7	.722
Cleveland, Ohio.....	1,310	76	1.160	701	29.4	.838
Dayton, Ohio.....	1,104	70.5	1.277	729	30.5	.836
Toledo, Ohio.....	1,220	73	1.196	756	29.4	.777
Buffalo, N. Y.....	1,494	82	1.098	656	33.6	1.024
Cincinnati, Ohio.....	1,049	57.7	1.100	674	30.5	.905
Columbus, Ohio.....	1,103	73	1.323	633	29.4	.928
Indianapolis, Ind.....	961	67.5	1.404	782	32.6	.833
Peoria, Ill.....	945	57	1.206	996	38.9	.781
St. Paul, Minn.....	1,276	65	1.018	1,376	52.7	.766
Red Wing, Minn.....	1,200	65	1.063	1,333	52.7	.792
Memphis, Tenn.....	555	45	1.621	961	41	.853
Milwaukee, Wis.....	1,152	57	.969	1,045	34.7	.664

The rates from Houston apply from the extensive Texas common-point territory and from the Dallas-Fort Worth group. The rates from Norfolk are the same as those from the other Virginia cities. The distances from Norfolk may be somewhat greater than the average distances from the Virginia cities rate points, and the distances from Houston may be slightly less than the average distances from Texas common points. But regardless of the extent of the territory from which its rates now apply Houston is entitled to reasonable and nondiscriminatory rates.

The complainants failed to show any similarity of transportation conditions between the two sets of rates; and the testimony presented with reference thereto and our records show a greater density of all traffic on the lines leading from Norfolk than on the lines from Houston. Merely to show that carriers in one section maintain rates which are lower per mile than carriers elsewhere is not sufficient to establish an unlawful rate relationship.

With the exception of some through rates which are composed of the aggregates of the intermediate rates, the rates from Norfolk and Houston to the destinations involved are governed, respectively, by the official and western classifications; some of the combination rates are governed in part by the official classification and in part by the western classification. Shelled and unshelled peanuts, in carloads, are rated fourth class in both of those classifications. From Norfolk to St. Louis the commodity rate on peanuts is 41 cents, and the fourth-class rate is 43 cents; the commodity rate on peanuts from Houston to St. Louis is 50 cents, the fourth-class rate is 96 cents, the fifth-class rate 75 cents, and the class C rate 58 cents. The rates on peanuts in the southwest are generally less than the fourth-class rate. The rates on peanuts from Houston are a less proportion of the fourth-class rates than are the rates from Norfolk or from points in Louisiana and Oklahoma. Defendants also show other comparisons between the rates under attack and class rates. Class rates in the territory from Norfolk are not comparable with class rates in the west which bear but little relationship among themselves. In the *1915 Western Rate Advance Case*, 35 I. C. C., 497, 573, we said:

Comparisons are shown between the percentage that the grain rates in central freight association territory bear to the first and fifth class rates in that territory and the corresponding percentage that the grain rates in the territory involved bear to the same classes in that territory. Such comparisons are of little or no value, because there is no substantial identity in the articles comprised in the same numbered classes east and west and because of the widely different rates in the same class for approximately the same distance. \* \* \*

Obviously by selecting for comparison the different points between which the same class rates apply, radically different results could be obtained, and we are unable to find any justification for proposed rates based on comparisons con-



taining such uncertain and shifting data and involving so many unsupported assumptions.

The present rates on peanuts from Houston bear about the same relation to the rates on peanuts from Norfolk as the earnings per ton-mile on all traffic in the western district bear to such earnings in the eastern district.

The complainants offered comparisons of the rates on peanuts from Houston with rates on clean rice, wheat, flour, watermelons, potatoes, and sugar. Complainants, however, admitted that the rates on sugar were not fairly comparable with the rates in issue. Wheat and flour move southbound and rates on those commodities from points in Iowa, Kansas, and Nebraska to Houston were cited by complainants. Fairly illustrative of the rates cited are the rates of 37.5 cents on wheat and 42.5 cents on flour from Dodge City, Kans., to Houston, 787 miles. Southbound rates on wheat and flour are influenced by some conditions which do not affect the rates on peanuts from Houston, but in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, 116, the same rates were prescribed for application on unshelled peanuts and flour in the same territory. Rates from Houston to Chicago are 57 cents on peanuts, 47 cents on watermelons, and 52 cents on potatoes; to Buffalo, N. Y., 82 cents on peanuts, 63.6 cents on watermelons, and 68.6 cents on potatoes; during the latter half of the year the rates on watermelons are 5 cents higher. The minimum weight on peanuts, watermelons, and potatoes is 24,000 pounds.

Complainants ask generally for the same rates as now apply on clean rice; to Chicago, and a few other points, rates somewhat less than the rates on clean rice are asked in order more nearly to equalize the rates on peanuts with the rates from Norfolk. The following table shows the rates on peanuts and clean rice from Houston to representative destinations, with the distances and the revenue per ton-mile:

To—	Miles.	Peanuts.		Clean rice.	
		Rate.	Revenue per ton-mile.	Rate.	Revenue per ton-mile.
.....	789	<i>Ann.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
.....	1,057	50	1.277	34	0.938
.....	1,810	57	1.058	40	.748
.....	1,810	70	1.180	47	.717
.....	1,104	70.5	1.277	43	.779
.....	1,230	73	1.190	47	.770
.....	1,494	82	1.086	47	.688
.....	1,049	87.7	1.100	42	.800
.....	1,108	73	1.330	43	.779
.....	981	67.5	1.404	45	.986
.....	945	87	1.206	40	.846
.....	1,278	65	1.013	48	.789
.....	1,200	65	1.053	48	.800
.....	884	45	1.031	35	.991
.....	1,182	57	.980	42	.720

A witness for the defendants, in effect, admitted that the cost of service for the transportation of peanuts and of rice moving under similar conditions is the same. The rates on clean rice from Texas are influenced to some extent by water competition. *Memphis Freight Bureau v. I. C. R. R. Co.*, 30 I. C. C., 471; *Rice from Texas and Louisiana*, 40 I. C. C., 285. The rates on clean rice from Texas have recently been increased, and they are approximately the same as rates on cowpeas, applying in similar territory. In *Rice from Texas and Louisiana, supra*, the Commission stated:

To points in Iowa from Lake Charles, La., the rates on cowpeas, a commodity bearing some transportation analogy to rice, are generally lower, although in a few instances higher, than the rates on (clean) rice.

The value per pound on some of the commodities, the rates on which are contrasted, are actually or approximately: Shelled peanuts, 9 cents; flour, 5 cents; rice, 5 cents; wheat, 3.5 cents.

In the *1915 Western Rate Advance Case, supra*, the Commission found that a reasonable carload minimum on flour was 40,000 pounds. The minimum on clean rice is generally, on the rates in the territory involved, 30,000 pounds, although to some points in central freight association territory the minimum from Texas is 40,000 pounds. Complainants expressed a willingness to concede a higher minimum on peanuts, and, from the standpoint of the capacity to load, a minimum in excess of 30,000 pounds would be reasonable. In *Railroad Commission of Louisiana v. A. H. T. Ry. Co., supra*, the Commission prescribed the same minimum, 30,000 pounds, on unshelled peanuts and flour.

The hazard in shipments of shelled peanuts is negligible and in everything except value, carload minimum, and the amount of the shipments they are comparable, from the transportation standpoint, with wheat, flour, clean rice, and cowpeas. Each of these commodities is a food product, and the value of peanuts as such is stated to be as high for an equal weight as meat.

The average haul and earnings on the Santa Fe system for the year 1916 were:

Commodity.	Average haul.	Earnings per ton-mile.	Commodity.	Average haul.	Earnings per ton-mile.
	Miles.	Cents.		Miles.	Cents.
Hay, straw, alfalfa.....	191	1.16	Vegetables.....	416	1.042
Broom corn.....	453	1.395	Hickory nuts.....	967	1.142
Cottonseed and products.....	200	1.043	Rice and products.....	377	.617
Flaxseed.....	94	1.83	Flour.....	398	.814
Potatoes.....	482	1.00	All carload traffic.....	314	.81

In 1915 the earnings for that system were 0.969 cents on rice and rice products for an average haul of 180 miles, and 0.859 cents on flour for an average haul of 486 miles.

In an exhibit filed by the defendants the rates and minimum revenues per car on 18 different commodities from Houston to St. Louis, Chicago, Milwaukee, and St. Paul are compared with the rates and minimum revenues per car on peanuts. The actual loading of peanuts shipped by the complainant oil company is greatly in excess of the minimum weight. The record does not disclose the value, average loading, or other incidents of transportation of the commodities cited in comparison by the defendants. The rates on peanut oil, a product of peanuts, and one of the commodities shown in the defendants' exhibit, from Houston to St. Louis and Chicago are 40 cents and 46 cents, respectively, minimum weight, 30,000 pounds.

Some of the Texas lines showed rates and loading on shipments of peanuts from points in Texas to Houston, and called attention to the fact that on some part of such movement transit is permitted. The charges under these transit regulations and the long haul into Houston make transit unavailable for the greater part of the complainant oil company's shipments. These facts, however, have little bearing on the issues here, as the rates from Houston, and not from the country stations, are before us.

Upon consideration of all the facts of record, we find that the allegation of undue prejudice has not been sustained; but we find that the rates on peanuts, shelled or unshelled, in carloads, from Houston to the points specified below, and to points taking the same rates, as provided in F. A. Leland's I. C. C. No. 1116, and in Wm. Cameron's I. C. C. No. D-94, are, and for the future will be, unreasonable to the extent they exceed the following rates per 100 pounds: To St. Louis, Mo., 45 cents; Chicago, Ill., 52 cents; Milwaukee, Wis., 52 cents; St. Paul and Red Wing, Minn., 60 cents; Toledo, Ohio, 65½ cents; Cleveland, Ohio, 68½ cents; and Buffalo, N. Y., 74 cents.

An appropriate order will be entered.

No. 9553.  
NORTHWESTERN TRAFFIC & SERVICE BUREAU,  
INCORPORATED,  
*v.*  
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY  
COMPANY ET AL.

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*Submitted July 5, 1917. Decided December 15, 1917.*

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1. Tolerance is the allowable margin of error between the origin and destination scale readings, arising from differences in scales or errors in weighings or from the absorption or evaporation of moisture by the shipment in transit, which must be exceeded as a condition precedent to the correction of the billed weight and the reweighing of the shipment free.
2. The question here involved is whether the increased total tolerance has been justified, even though the increase was effected by providing separately for a moisture tolerance as an addition to the previous scale tolerance; *Held*, That the increase of March 1, 1917, in the tolerance on coal is not justified.

*H. L. Laird, G. Frank Morris, and Stanley B. Houck* for complainant.

*O. W. Dynes, A. H. Lossow, Charles Donnelly, John F. Finerty, James B. Sheean, Robert H. Widdicombe, W. F. Dickinson, F. M. Miner, A. P. Humburg, and Kenneth F. Burgess* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

DANIELS, *Commissioner*:

Prior to March 1, 1917, the defendants' tariffs provided that the weight of shipments of coal as determined at the point of origin would be corrected, and that no charge for the reweighing would be made, when the difference between that weight and the weight as determined at the point of destination upon a reweighing of the shipment at the request of the shipper or consignee exceeded 1 per cent of the point of origin weight, subject to a minimum of 500 pounds. Effective on the date mentioned the tariffs were so amended as to provide for an additional difference between the two weights of 1 per cent of the point of origin weight on bituminous coal, and of one-half of 1 per cent on anthracite coal, as a condition precedent to the correction of the origin weight and the reweighing of the shipment free. The difference between the two weights is referred to in

each case in the record as "tolerance." The first-mentioned tolerance covered only scale variations due to differences in scales or the errors in weighing thereon, while the additional tolerance covered variations in weight assumed to be due to the absorption or evaporation of moisture by the shipment in transit. The complainant members of the petitioning association, who are engaged in the operation of coal yards at various points throughout the territory affected, allege that these tolerance percentages, both separately and combined, are unreasonable and should not exceed, combined, "somewhat less than 1 per cent"; that they subject coal as a particular description of traffic to undue prejudice and disadvantage and give to other commodities as to which the total tolerance is only 1 per cent an undue preference and advantage; and that they are unlawful in that they act to limit the liability of carriers for loss of freight in transit; the latter contention being based upon the accepted practice of the defendants in requiring shippers to reduce their claims for alleged shortage by the amount of the tolerance.

The complaint covers carriers operating in the states of Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Missouri, and Kansas.

The two tolerances described are now published in one tariff rule, which provides that they shall be computed separately and added together, the percentage in each case to be taken of the weight as determined at the point of origin. On cars of 50,000 pounds or more of bituminous coal this is tantamount to saying that the total tolerance shall be 2 per cent; but on cars of a lesser weight this is not true, on account of the operation of the minimum weight provision of the scale tolerance. Thus on a 40,000-pound car a 2 per cent tolerance would amount to 800 pounds, whereas by computing the tolerances separately and adding them together the total tolerance would be 900 pounds, made up of the 500-pound minimum, in lieu of the 1 per cent, for the scale tolerance, plus 400 pounds, or 1 per cent, for the moisture tolerance.

The provision for tolerance on commodities generally has been in effect for a number of years and has varied in different localities. We discussed the question in *In re Weighing of Freight by Carrier*, 28 I. C. C., 7, wherein it appeared that the tolerance was 1,000 pounds in western trunk line territory and 500 pounds in some other parts of the country. We there held that the 1,000-pound tolerance was too high and that "if one tolerance is to be fixed for the weighing of all commodities, 500 pounds would seem to be large enough," but we entered no order in that proceeding. As a result of that proceeding the American Railway Association and the National Industrial Traffic League, which is perhaps the largest of the shippers' organizations, each appointed a committee to cooperate in the formulation

of a national code of rules governing the weighing of freight, which would be satisfactory to both carriers and shippers. On June 14, 1914, we recommended the adoption of the code agreed upon by these committees, subject to our further consideration of any or all of the rules upon complaint. A note immediately following the rule governing tolerance provided that "tolerance on coal and coke does not include difference in weight due to evaporation, which shall be determined and published in initial carrier's tariffs." The additional tolerance of March 1, 1917, was provided for by reason of the reservation contained in this note. The tolerance referred to in the weighing investigation appears to have covered all differences in weight, including differences due to the evaporation and shrinkage of moisture as well as scale variation.

The record does not definitely establish the basis for either of the tolerances now being considered. Asked whether the scale tolerance was arrived at from actual tests of shipments weighed and reweighed under ordinary transportation conditions the witness for the carriers stated that "I am free to confess that I am not sure where the 1 per cent came from. \* \* \* I think it was a good deal like Topsy; it just grew. The 500-pound minimum was the outgrowth of the weighing case of the Interstate Commerce Commission \* \* \*. The 1 per cent was, I think, just a general condition that was conceded to by both contending parties. \* \* \* I have an indistinct idea that the 1 per cent was something that had previously governed in a good many of the different territories."

The defendants' explanation of the moisture tolerance is equally general in character and not grounded on actual tests on their part. Chief reliance is placed upon tests made by the Bureau of Mines of the United States Geological Survey, the results of which are compiled in the following table:

State.	Total number of samples.	Average per cent of moisture in coal as received.	Average per cent of moisture lost by air-drying.
Alabama.....	128	3.08	1.92
Arkansas.....	65	4.52	4.10
Colorado.....	493	8.97	4.56
Illinois.....	135	11.65	6.67
Indiana.....	70	12.04	7.17
Iowa.....	18	14.78	8.72
Kansas.....	42	7.12	5.77
Kentucky.....	81	5.90	3.17
Missouri.....	256	12.48	9.02
New Mexico.....	79	5.73	2.55
North Dakota (lignite).....	41	38.07	26.67
Oklahoma.....	75	4.07	2.10
Pennsylvania.....	883	2.81	2.22
South Dakota (lignite).....	10	37.74	27.75
Texas (lignite).....	19	33.71	23.91
Utah.....	99	9.04	3.52
West Virginia.....	1,273	3.16	2.42
Wyoming.....	518	13.26	9.18



It appears, however, that these laboratory tests of the Bureau of Mines were made under substantially different circumstances and conditions from the practical tests that would be more pertinent to the issue here involved.

The witness knew nothing of the period or periods over which these tests were made, or of how the samples were selected, or of the general procedure of the Bureau of Mines in making the tests, and he knew of no tests made by the individual defendants under actual transportation conditions in the ordinary course of business. He stated that "we had the government tests covering some 4,000 samples that we felt were good enough for us."

The obligation devolved upon the carrier to justify this addition to the former tolerance. It had, or could have had, in its possession a record of the origin weights of cars of coal and the destination weights where request at destination had been made to reweigh the coal. The absence of any evidence of this kind upon the record is significant, although it should be recited that counsel for the carriers on argument expressed the carriers' willingness to afford the Commission additional information based on such records as the carriers might have. Instead, however, of putting in evidence actual records of origin and destination weights, the carriers contented themselves with reference to certain experiments conducted by the Bureau of Mines. There is nothing to show that these experiments in any wise cover the absorption of moisture by coal. There is no compelling force in the suggestion that the conditions governing the experiments which determined loss in weight by drying were so analogous to the conditions under which coal moves in cars as to justify inferentially the tolerance rule to cover this factor of loss or gain due to moisture.

The defendants have not shown that they adopted the moisture tolerance on anthracite coal as a result of actual tests on their part. They state that they established this tolerance at one-half of 1 per cent because the eastern carriers of anthracite coal had done so. The eastern lines, however, also established the moisture tolerance on bituminous coal at the same figure. This was doubled by the defendants, they state, because their coal contains more moisture and loses more weight by evaporation, as shown by the comparison of western coals with those of West Virginia and Pennsylvania afforded by the above table.

The defendants point out that not only is the scale tolerance of 1 per cent in effect quite generally intrastate throughout the territory affected but also that the moisture tolerances here attacked are in effect intrastate in Indiana, Missouri, and Iowa; on the Illinois Central in Kentucky, Tennessee, and Mississippi; on interstate traffic

in Texas; that authority for their publication has been given in Wisconsin and Minnesota; and that no protestants appeared in a suspension proceeding now pending in Illinois. They further direct attention to the provision in an Oklahoma statute that for a discrepancy between the origin and destination weights of coal "the carrier delivering to the consignee shall be liable to the consignee for all deficiencies in weight less the natural shrinkage, which shall not exceed 1 per cent for a 150-mile haul or less, and  $1\frac{1}{2}$  per cent on more than a 150-mile haul."

The complainant presents figures which, they state, represent the results of actual reweighing tests at destination in support of their contention that the tolerance percentages are too high.

One member of the complainant association, who operates a coal yard at Minneapolis, testified that the average shortage from the billed weight on 54 carloads of bituminous coal, about 50 per cent of his total shipments, reweighed over wagon scales at that point during March and April, 1917, was 175 pounds a car. The total overweight was subtracted from the total underweight before the division by 54. Thirty-seven cars were short an average of 427 pounds and 17 exceeded the billed weight an average of 403 pounds. The scales at Minneapolis are tested by the state about twice a year.

Another of complainant's members testified that the average shortage on 18 carloads of hard coal, computed in the same way as that above described, shipped to one customer at Minneapolis during the period from March 1, 1916, to May 1, 1917, was 32 pounds a car, and the average shortage on 27 carloads of bituminous coal shipped to the same customer during the same period 470 pounds a car. This coal was sold on the basis of weights determined by the state.

A third member testified that the total net shortage from the billed weights on 63 carloads of ex lake coal shipped from Superior, Wis., to Minneapolis during the period from April 1, 1916, to May 1, 1917, after deducting overweights totaling 2,940 pounds on some of the cars, was 9,960 pounds. These destination weights were taken over track scales, the regulation of which, as well as the supervision of the process of weighing, is by the state. These cars were weighed both loaded and empty.

One company, which operates 70 coal yards throughout five of the western states involved, testified that the average shortage from the billed weights on about 95 per cent of its total shipments of both bituminous and anthracite coal, including its receipts of western, southern, and eastern coals, was 1.45 per cent in 1913, 1.36 per cent in 1914, 1.30 per cent in 1915, and 1.75 per cent in 1916, the latter percentage being abnormally high, it was said, on account of the higher price of coal in 1916 and a correspondingly greater loss from

theft. The 1915 test involved the reweighing of approximately 47,000 tons of coal and the 1916 test the reweighing of about 50,400 tons.

This complainant further testified that the difference between the invoice and selling weights of his shipments in 1915 was 1.63 per cent of the total billed weight, which included loss from pilferage and other shrinkage incident to the open-yard storage of the coal from the receiving period from May 15 to July 15 to the selling period of October, November, and December.

The differences between the wagon-scale weights and the track-scale weights of 40 cars weighed over both a wagon scale and a track scale by this complainant at Goodland, Kans., during the years 1915 and 1916 ranged from 130 to 6,270 pounds. Of the differences over 1,000 pounds the track-scale weights exceeded the wagon-scale weights by 1,010, 1,140, 1,470, 1,770, 1,210, 1,220, and 6,270 pounds, on seven of the cars; while the wagon-scale weights exceeded the track-scale weights by 1,090, 1,410, 1,630, and 2,410 pounds, on four of the cars.

We understand that this complainant also subtracted the total overweights from the total underweights in arriving at the average shortage.

The defendants, referring particularly to the tests made by the last-mentioned complainant, state first that the wagon tests are unreliable because the liability to error is "multiplied in exact ratio to the number of wagon loads in the car," and second that the "fundamental fallacy" underlying these tests is that they present average figures. In amplification of this latter thought it is suggested, with respect to the scale tolerance, that with a sufficient number of tests the difference in weight will average itself out by the number of overweights counterbalancing the number of underweights, since the likelihood of error one way is as great as the other, but that even so, the scale tolerance is not shown to be improper, since the margin of error would still exist; that is, it would still be, say, 1,000 pounds if a given number of reweighed cars were each 1,000 pounds short of the billed weight and an equal number exceeded the billed weight in that amount. With respect to the moisture tolerance, however, the case is said to be different, since ordinarily the difference in weight is due to the evaporation rather than to the absorption of moisture, and therefore will not average itself out with any number of tests. The contention, therefore, is that the average difference in weight shown by the complainant's tests are really differences due to the evaporation of moisture content, and that, properly analyzed, they support the defendants' case.

The defendants concede that the total tolerance can not be definitely apportioned between its constituent elements of scale and moisture tolerance.

The burden of proof rests with the defendants, not only with respect to the establishment on March 1, 1917, of the additional 1 per cent for moisture tolerance, but as well with respect to the increase on that date in the total tolerance, which is the net result of the change, and which presents the issue of prime importance to the shipper.

In *Stopping of Cars in Transit to Complete Loading*, 36 I. C. C., 130, we interpreted that clause of the act which limits its specific reference to the carrier's burden of proof to increased rates to embrace by necessary implication "any change disadvantageous to the shipper existing at the time the suspended schedule is filed." We think that view is amply warranted here, where a rule of long standing is changed to the disadvantage, in many cases, of the shipper, and where the general facts bearing upon the justification of the rule are more fully within the reach of the carrier than of the shipper.

Even conceding the contention of the defendants that the numerous processes incident to the reweighing in part lots of a shipment over a wagon scale conduce less to accuracy than the single reweighing of the entire contents of the car over a track scale, the results of the complainant's reweighings over wagon scales, as well as its reweighings over track scales, still remain such as to create an impression of unreasonableness in the total tolerance, which requires for its dissipation more substantial evidence of a practical nature than is presented by the defendants upon this record in justification of the increase in that tolerance.

We can hardly accept the previously described laboratory tests made by the Bureau of Mines as controlling as regards the proper measure of moisture tolerance on shipments of bituminous coal made under ordinary transportation conditions, in all kinds of weather and through different climates. Nor can we accept as justification for the anthracite tolerance the mere reference to what the eastern lines have done.

We have stated that the real question is whether the increase in the total tolerance has been justified. The 1 per cent which was in effect prior to March 1, 1910, may or may not be sufficiently high to cover variations due both to differences in scales and the processes of weighing and to moisture absorption and evaporation. It followed, as explained, our investigation in the weighing case cited, and appears to represent mainly a compromise of the conflicting claims of the American Railway Association's committee for the 1,000 pounds formerly in effect in western trunk line territory and of the National

Industrial Traffic League's committee for the 500 pounds prescribed by us in that case. We did not there prescribe 500 pounds as the minimum tolerance, but held, as stated, that if one tolerance was to be fixed, 500 pounds would seem to be high enough. The tariffs then made no separate provision for moisture tolerance. In a previous part of the report in that case we referred to the loss of weight of coal due to the evaporation of moisture in transit.

The contention of complainant that the original tolerance rule of 1 per cent is unreasonable, can not, on this record, be sustained. That tolerance rule resulted from a conference between a representative organization of shippers and the carriers, was attended by representatives of this Commission, and issued in an adjustment accepted by both parties and recommended by this Commission for adoption. The immunity from attack which this rule has generally enjoyed, and the absence of compelling reasons on this record to show that it is unreasonable, constrain us to hold that the original tolerance rule herein attacked has not been shown to be unjust or unreasonable or otherwise unlawful.

We find upon all the facts that the increased total tolerance of March 1, 1917, has not been justified by the evidence presented by the defendants upon this record. We further find, as incidental to this main finding, in view of the publication separately of the moisture tolerance, that the additional tolerance of 1 per cent for moisture absorption and evaporation on bituminous coal, and the additional tolerance of one-half of 1 per cent for moisture absorption and evaporation on anthracite coal, established as of that date, have not been justified.

The fact that carriers in negotiating the settlement of claims for loss and damage urge that shippers assent to a deduction of 1 per cent from the billed weight, or indeed any per cent because such percentages are carried in the tolerance rule embodied in carriers' tariffs, is not ground for this Commission to hold that the tariff publication of the tolerance rule *per se* is an attempt by the carriers to limit their lawful liability.

We shall enter no order for the future. This record does not afford an adequate basis for the determination of what a reasonable total tolerance would be, whether 1 per cent, or more or less than 1 per cent. The demands of the present record will be satisfied by our finding with respect to the justification for the changed tariff, and by our consequent order requiring the defendants' tariff provisions of March 1, 1917, for an increased total tolerance on coal to be canceled.

Our order will provide accordingly.

No. 9354.

LINCOLN COMMERCIAL CLUB

v.

COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted May 14, 1917. Decided December 15, 1917.*

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Upon complaint that rates on bituminous coal, nut, pea, and slack, in carloads, to stations on the Chicago, Burlington & Quincy Railroad, in the state of Nebraska—Sweetwater to Angora, both inclusive—from mines in the state of Colorado are unreasonable; and that the failure of defendants to publish and maintain lower rates on nut, pea, and slack coal to the same stations subjects complainants' members to undue and unreasonable prejudice and disadvantage and gives to other coal dealers located at other stations in the same general territory undue and unreasonable preference and advantage; *Held*, That the evidence shows the adjustment of rates complained of is, as regards nut coal, unduly prejudicial within the meaning of the act.

*Henry T. Clarke* and *W. S. Whitten* for complainant.

*Frank S. Proudfit* for R. R. Proudfit Lumber Company.

*T. C. Renwick* for Dierks Lumber & Coal Company.

*Kenneth F. Burgess* and *R. H. May* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

This is a complaint by a voluntary association of individuals, for and on behalf of certain of its members, who operate coal yards at various stations between Sweetwater and Alliance, Nebr., on the Billings-Montana line of the Chicago, Burlington & Quincy Railroad Company, hereinafter called the Burlington, and at Angora, Nebr., a station on the Brush-Alliance branch of the Burlington, that rates for transportation of bituminous coal, nut, pea, and slack, in carloads, to the stations referred to from Colorado coal districts are unreasonable, in violation of section 1 of the act; that defendants publish rates on nut, pea, and slack coal to stations on the Burlington from Colorado coal districts in the same general territory which are uniformly lower; and that by reason thereof complainant's members are subjected to undue prejudice and disadvantage in violation of section 3 of the act. Reparation is asked.

At the hearing that part of the complaint which related to other Colorado coal-originating districts than Trinidad and Walsenburg was withdrawn by complainant.



Certain of complainant's members operate coal yards at Sweetwater, Hazard, Litchfield, Mason, Ansley, Berwyn, Broken Bow, Merna, Anselmo, Alliance, Seneca, and Hyannis, stations on the Billings line of the Burlington, and one member operates a yard at Angora.

The Burlington has a large number of lines in the eastern part of the state of Nebraska. Its Billings line extends in a northwesterly direction across the state from Lincoln, through Aurora, Ravenna, and Alliance. A branch line extends in a northwesterly direction from Aurora, a station about 55 miles east of Sweetwater, to Ericson, about 117 miles from Aurora. From this line a branch extends from Palmer, Nebr., in a northwesterly direction, to Sargent, Nebr., about 108 miles from Aurora. Another branch line extends northwesterly from Greeley Center, Nebr., to Burwell, Nebr., about 139 miles from Aurora.

The Union Pacific Railroad Company, hereinafter called the Union Pacific, also operates a number of lines in the state of Nebraska. Its main line extends across the state from Omaha through Fremont, Nebr., and Central City, Nebr., a point about 19 miles north of Aurora, and through Grand Island, Nebr. It operates branch lines from Pleasanton, Nebr., northeasterly to St. Paul, Nebr., with other branch lines to Loup City and Ord, Nebr., stations on the Aurora-Sargent and Aurora-Burwell branches of the Burlington, hereinbefore described. The Union Pacific also operates a branch line from O'Fallons in a northwesterly direction through Northport (near Bridgeport), Nebr., a point about 14 miles south of Angora, to Gering, Nebr. Bridgeport is reached by the Burlington.

Rates on coal to points in Nebraska from the Walsenburg and Trinidad districts of Colorado are blanketed in so far as destination points are concerned; that is to say, to practically all points in the state rates are the same. Rates in dollars per ton to the Nebraska points involved in this complaint on the different grades of coal published by the Colorado & Southern, and concurred in by the Burlington, from the Trinidad and Walsenburg districts, are shown by the following table:

	Lump.	Nut.	Slack.
Trinidad district to all stations—Sweetwater to Merna, inclusive.....	\$4.00	\$4.00	\$3.75
Trinidad district to stations—Anselmo to Angora, inclusive.....	4.00	4.00	4.00
Walsenburg district to all stations—Sweetwater to Angora, inclusive.....	3.75	3.75	3.75

Rates published by the Denver & Rio Grande, concurred in by the Burlington, are the same as the above except that no lower rates are named on slack coal to any station from Angora to Sweetwater. It

is stated by the defendants that the lower rates on slack coal are mere paper rates, as no shipments have ever been made under them.

Rates on coal published by the Union Pacific to practically all points reached by it in Nebraska from Rock Springs, Wyo., are \$3.50 per ton on lump; \$3 on nut; and \$2.75 on slack.

A statement, certified by the Nebraska State Railway Commission, was submitted by complainant, which shows that an aggregate of 1,472 cars of coal were received at Burlington stations from Angora to Sweetwater, both inclusive, during the year ended June 30, 1916. The defendants filed an exhibit showing that 1,296 carloads of coal were received at the same stations for the same period. No explanation of the difference between the number of carloads shown by the state commission and the defendants appears in the record. The complainant's purpose in submitting the statement is to establish that there is a large movement of coal to the stations in question. The defendants' purpose is to show the points of origin of the shipments. Their exhibit shows that 584 cars were received from mines in other states than Colorado; 294 were shipped from the Walsenburg district; none from the Trinidad district; 276 from Colorado districts not named in the complaint; and 142 from Colorado mines the names of which could not be ascertained. Complainant shows that about one-fourth of the aggregate shipments consist of nut coal. There is no showing that complainant's members are interested in shipments of slack coal.

Previous to May 9, 1916, rates on all sizes of coal to practically all points in the same general territory as the stations named by complainant from the Walsenburg and Trinidad districts were the same. There were some exceptions as to slack coal above noted. On the date named the Burlington reduced its rates 50 cents per ton on nut coal to Ravenna and other points east of Sweetwater on the Billings line, and to all points on the branch lines to Sargent, Burwell, and Ericson.

The complainant introduced a number of exhibits to show that rates on nut and smaller sizes of coal are unreasonable when compared with rates on the same grades of coal to points in the same general territory. It is not necessary to here set out the exhibits in detail. It will suffice to state that they show that from Walsenburg defendants maintain a blanket rate of \$3.75 per ton on all classes of coal and from Trinidad \$4 per ton on all classes, except as above noted on slack, to all stations from Angora to Sweetwater, both inclusive, for a minimum average distance of 397 miles, and a maximum average distance of 650 miles, with an average distance of 535 miles, yielding minimum earnings of 5.7 mills per ton-mile, maximum earnings of 9.1 mills, and average earnings of 6.1 mills. At the same time

they maintain rates on the smaller sizes of coal 50 cents per ton lower than the blanket rate to points on the Sargent, Burwell, and Ericson branches, for a minimum average distance of 606 miles, a maximum average distance of 734 miles, and an average distance of 661 miles. The yield per ton-mile under the rates on the smaller sizes, based on the average distance, is 4.9 mills. The complainant further shows that the haul to points on the Billings line is main-line service as compared with branch-line service.

The defendants contend that the reasonableness of blanket rates, such as are here involved, are not to be determined by the amount of revenue received on traffic to certain points within the blanket. The contention is sound in cases where blanket rates are so adjusted as to work no undue prejudice to any shipper, receiver, or locality. There is no attack upon the blanket adjustment, and whether there is any undue prejudice against shippers and receivers of coal in the western part of the state as compared with those in the eastern part is not here for determination. The only question here is, Did the reduction in rates by the Burlington in May, 1916, to points on the Sargent, Burwell, and Ericson branches and on the Billings line operate to unduly prejudice complainant's members?

The assistant manager of a lumber and coal company, with yards at Sweetwater, Hazard, Litchfield, Mason, Ansley, Berwyn, Broken Bow, Merna, Anselmo, and Alliance, submitted a statement showing that his company received, in the aggregate, at all the stations named, 111 carloads of lump and 37 carloads of nut coal during the year ended April 1, 1916, from the Walsenburg district. He testified that reports to the company from its local managers were to the effect that at Sweetwater and other stations competition in the sale of coal was with stations on the Sargent branch of the Burlington and the Kearney-Stapleton branch of the Union Pacific, both of which parallel the Billings line for a distance of about 51 miles from Sweetwater; that his information from the same source is that customers residing midway between towns at which the company has yards and towns on the Sargent and Stapleton branches go to towns on the latter branches for their coal on account of the lower price; that under normal conditions there is a spread of 50 cents per ton between the price of lump and nut coal, and \$1 to \$1.30 per ton between lump and slack coal at the mines; and that the company has been losing the coal business of customers who give it their lumber and other business on which there is no freight rate advantage.

The auditor of the same company testified that it was part of his business to visit the different coal yards of the company; that the towns of Sweetwater, Hazard, Berwyn, Ansley, and Litchfield were

in competition with towns on the Union Pacific to the south, particularly in the thrashing season when the thrashers purchase carloads of nut coal; that the chief competition that is experienced at Hazard and Litchfield is with Loup City, on the Sargent branch of the Burlington; that the company made better prices on nut coal at stations on the Sargent branch than at stations on the Billings line; that where all dealers are not on an equal basis of freight rates, competition with the preferred dealer can not be met; that the company handles lumber and other articles together with coal; that if a customer comes to town for coal, he will also purchase something else, and it is what is bought at the same time as the coal that makes the competition felt; and that competitive points are 20 to 25 miles apart, and a customer will go far to save 50 cents a ton on his coal.

The cashier of a coal company with yards at Angora testified that cross-country competition was felt from Bayard and Bridgeport, Nebr., stations on the Burlington, where the rate on nut coal was 50 cents per ton less than at Angora; that in the fall of 1916 the company lost trade on a lot of nut coal because of the lower prices at competitive points; and that the local manager of the company informed him that competition from Bridgeport and Bayard was felt at Angora to considerable extent.

The complainant argues that in an agricultural community cross-country competition is tangible and severe; that there is a so-called neutral zone in the territory lying between two competing railroad towns, and parties residing therein will give their trade to that town which furnishes better service and cheaper prices; and that the effect of lower freight rates extends not only to the particular commodity having the lower rates, but to other lines of trade as well.

The Burlington publishes a rate on small sized coal 50 cents per ton lower than on large sized coal to all stations on the Burlington line east of Alliance, and including Sweetwater, from mines in central Wyoming. It also maintains lower rates on the smaller sized coal from Newcastle, Wyo.

A representative of the Burlington testified that the reason for the establishment and maintenance of lower rates on nut coal to points on the Sargent, Burwell, and Ericson branches, and on the Billings line to Ravenna, is because Colorado coal comes into direct competition with coal from Rock Springs on the Union Pacific; that for competitive reasons it has been the practice of the Burlington to keep Walsenburg and Trinidad coal on the same basis as Rock Springs coal; that the two coals are of about the same quality, and everything else being equal, should take the same basis of rates; that on April 20, 1916, the Union Pacific made a general reduction of 50 cents per ton in rates on smaller sizes of coal to points on its line

in Nebraska from Rock Springs; that this was done for the stated reason that Rock Springs operators claimed that while they could find a ready market for their larger sizes they were unable to sell all of their smaller sizes; that the Union Pacific sought to increase the movement of the small sizes to enable Rock Springs operators to dispose of their product; that the Burlington strongly opposed the reduction on the ground that it would not increase the consumption to any appreciable extent; that operators in other fields experienced the same difficulty, and other lines would be obliged to take the same action to retain the established relation between the various producing points; and that the result would be all interested lines would handle the same tonnage on a generally reduced basis of rates.

He stated that when the Union Pacific made the reduction from Rock Springs the Burlington made a similar reduction on nut coal from Walsenburg and Trinidad districts to junction points with the Union Pacific, and reduced rates to points in intermediate territory where necessary to avoid fourth section departures; and that rates on slack coal made by the Union Pacific were not equalized, except that where the rates on slack exceeded the reduced rates on nut, they were reduced to the same basis.

This witness introduced exhibits to show that rates on coal to points on the Billings line with respect to which complaint is made are not unreasonable. In brief the exhibit shows mileages, the rate, and ton-mile yield, on nut and lump coal from Colorado producing points to all stations, Sweetwater to Alliance, both inclusive. It is asserted by the witness that although mileages have in fact relatively small importance when the entire blanket adjustment is considered, they are shown to indicate that in no instance are the existing rates unreasonable, considering the service at points of origin, to Denver, through that expensive terminal, and the participation of two or three carriers in the haul. The exhibit shows that the greatest ton-mile yield is 9.16 mills at Alliance, 409 miles from Walsenburg; that the lowest yield is 5.85 mills at Sweetwater, 641 miles from Walsenburg; and that the average is 7.07 mills for an average distance of 530 miles. Trinidad is 41 miles greater distance from each point than Walsenburg, and the ton-mile yield is accordingly less.

The Burlington witness further testified that lower rates on small-sized coal were originally established for the purpose of enabling mine operators to dispose of surplus product; that a few years ago there was very little demand for small sized coal; that it was hauled away from mines to dump piles; that such conditions no longer exist; that manufacturers and large buildings are equipped to burn small coal for power and heating purposes; that electric light and power plants are located all over the country and consume large



quantities of small sized coal; that the installation of automatic stokers on locomotives has caused railroad companies to become large consumers of small sized coal; that the result of all this has been a steady increase in the prices of small sized coal; that at the present time it sells nearly, if not quite, at the same prices as the larger sizes; and that in some coal districts the Burlington is paying the same prices for "screenings" as it pays for lump and egg coal.

It is asserted by the witness that there is no good reason for the maintenance of lower rates on the smaller sizes of coal than on the larger sizes anywhere in the country in the absence of competitive influences; that the cost to transport the smaller sizes of coal is as great as the cost of transporting the larger sizes; and that existing conditions do not justify a spread of the lower rates over more territory in the state of Nebraska.

It is argued by defendants that this proceeding consists entirely of an attempt to secure from the Commission an order which in effect will be to require the establishment and maintenance of lower rates on smaller sizes of coal; that no attack is made on the reasonableness of existing rates; that complainant is willing that the present rates should be maintained for the future on lump, egg, and run of mine coal; and that as there is no demand at the destination points for slack and pea coal the complaint is limited, as a practical matter, to nut coal.

As before stated, the issue is one of undue prejudice and disadvantage to complainant's members because of lower rates established and maintained by defendants to points on the Burlington in the same general territory. The Union Pacific is not a defendant. The mere fact that it maintains lower rates on coal from Rock Springs to points on its line than the Burlington maintains on Colorado coal to points on its lines would not constitute unjust discrimination against shippers and receivers of Colorado coal. Whether as an initial proposition the Commission would require the Burlington to establish lower rates on small sized than on large sized coal is not an issue in this case.

The defendants on brief contend that the territory to which the Burlington maintains lower rates on small sized Colorado coal is differently situated, and the circumstances and conditions are different from those in the territory covered by the complaint; that this territory is not intermediate to the territory to which a lower rate is now maintained; that the territory where the lower rate is now maintained is not competitive with the territory covered by the complaint; and that the complaining coal dealers have not been injured but have been benefited by the establishment of a lower rate on small sized



coal to points affected by Union Pacific competition at which they have coal yards.

The defendants further contend that as the cross-country competition which complainant meets at points on the Sargent branch is from 20 to 30 miles from points on the Billings line it is not properly to be considered prejudicial to maintain lower rates on the Sargent line. The distance from Ravenna to Sweetwater is 8 miles; cross country from Angora to Bridgeport, 14 to 18 miles; and from Litchfield to Central City, from 22 to 25 miles. Except as stated, the evidence does not show the cross-country distances. The map indicates that the maximum distance to points on the Billings line from Merna to Sweetwater from points on the Sargent branch is about 30 miles.

No evidence was offered to show that the blanket rate maintained by the Burlington on lump coal to Nebraska points is unreasonable. When that carrier established rates on nut coal to points on the Sargent branch and on the Billings line to Ravenna, 50 cents lower per ton on nut than on lump coal, to meet the competition of another carrier, or for any other reason, it did so under the obligation that no individual, corporation, or locality should be unduly prejudiced or disadvantaged thereby in any respect whatsoever. It is to be remembered that it is the custom or practice of the Burlington and other carriers in Nebraska to maintain lower rates on small sized than on large sized coal; and that to practically all points in the entire state reached by the Burlington, except in the extreme southeastern part, and in the territory north of Fremont, Nebr., and points on the line from Sweetwater to Angora, lower rates from Walsenburg and Trinidad are now maintained on small sized coal than on large sized. It is also to be noted that the lower rates are not confined to junction points of other carriers and points intermediate to the junction. For example, on the Sargent branch Loup City is a junction point with the Union Pacific, yet the lower rate is applied beyond Loup City to Sargent, a distance of about 33 miles, including four stations, as shown by the map. It is further to be considered that stations on the Billings line are more favorably situated, so far as transportation conditions are concerned. It is admitted by the Burlington witness that cross-country competition is recognized by the Burlington when it is considered forceful.

It is insisted by defendants that the evidence of competition from cross-country points on the Sargent branch with stations on the Billings branch, or elsewhere, is general in character and does not amount to a showing of unjust discrimination within the meaning of the act, or within the principles announced in decisions of the Commission. There is sufficient evidence, when all the facts and circum-

stances of record are considered, to warrant the finding that complainant's members at Angora, and stations between Merna and Sweetwater, both inclusive, are unduly prejudiced because of lower rates on nut coal at competitive points on the Burlington. There is not sufficient evidence to show that complainant's members are prejudiced by the absence of lower rates on slack and pea coal than on lump coal.

There is no showing that there is competition at stations on the Billings line between Merna and Angora with points on the Burlington that have lower rates. It may be that because these points are intermediate to Merna the rule of the fourth section will also require the maintenance of the lower rates that may be established at Merna to such points, but the rates to those points are not here shown to be unduly prejudicial. There is no such evidence of damage to complainant as would warrant an award of reparation.

Under the facts and circumstances appearing of record it is recommended that the Commission find that the maintenance by defendants of a lower rate on nut coal to points on the Sargent branch of the Burlington, on the Billings line to Ravenna, and to Bridgeport, than is maintained on the same grade of coal to points on the Billings line of the Burlington from Sweetwater to Merna, both inclusive, and to Angora, on the Brush-Alliance line of the Burlington, unduly prejudices complainant's members within the meaning of the act. It is also recommended that an order be entered requiring the defendants to cease and desist from the maintenance in the future of the prejudicial rate adjustment.

**DANIELS, Commissioner:**

The foregoing proposed report of the attorney-examiner was served upon the parties. Certain exceptions were filed by the defendants and the case was submitted without argument. A few slight and immaterial changes have been made in the report as originally served. No substantial error of fact was alleged or pointed out by defendants. They excepted to the conclusions reached by the attorney-examiner and disagreed with him as to the weight to be given to certain evidence.

We are of opinion that the conclusions reached by the attorney-examiner are correct, and his report, as modified, and the findings therein are adopted.

An order will be entered accordingly.

47 I. C. C.

No. 9515.  
**ARKANSAS RICE SHIPPERS TRAFFIC BUREAU**  
*v.*  
**ANN ARBOR RAILROAD COMPANY ET AL.**

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**PORTIONS OF FOURTH SECTION APPLICATIONS No. 458 ET AL.**

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*Submitted November 3, 1917. Decided December 15, 1917.*

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Upon complaint that the carload rates on clean rice and rice products from milling points in Arkansas to destinations in New England freight association territory, trunk line territory, central freight association territory, western trunk line territory, and Oklahoma are unreasonable and unduly prejudicial, and unjustly prefer shippers of rice and its products in Louisiana, Texas, New Orleans, and Memphis, *Held:*

1. That the group adjustment, considered as a whole, does not operate to the undue prejudice of the Arkansas shippers.
2. That the rates on rice and its products from Arkansas to destinations in the territories specified in the complaint, except in Oklahoma, are not shown to be unreasonable or unduly prejudicial except where such rates exceed the aggregates of the intermediate rates.
3. That the rates from Arkansas to destinations in Oklahoma are unreasonable to the extent that they exceed the rates prescribed herein.
4. Fourth section relief denied.

*Edward A. Haid* for complainant.

*Henry G. Herbel* for Missouri Pacific Railroad Company; *Wallace T. Hughes* for Gulf coast lines, Atchison, Topeka & Santa Fe Railway Company, and Chicago, Rock Island & Pacific Railway Company; *C. W. Owen* for Morgan's Louisiana & Texas Railroad and Steamship Company and Louisiana Western Railroad Company; and *J. A. Lynch* for Texas & Pacific Railway Company and *J. L. Lancaster* and *Pearl Wight*, its receivers.

*Chas. A. Bland* for Beaumont Chamber of Commerce, Atlantic Rice Mills, Beaumont Rice Mills, McFadden Rice Milling Company, and Tyrell Rice Milling Company; and *A. Pace* for Lake Charles Rice Milling Company.

*J. A. Morgan* for Chamber of Commerce of Houston, Tex.; and *Carl Giessow* for New Orleans Joint Traffic Bureau.

**REPORT OF THE COMMISSION.**

**DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.**

**CLARK, Commissioner:**

The Arkansas Rice Shippers Traffic Bureau, an association of rice millers and shippers in Arkansas, complains of the rates on clean rice

and rice products, in carloads, from milling points in the state of Arkansas to destinations in New England freight association territory, trunk line territory, central freight association territory, western trunk line territory, and in the state of Oklahoma. It is alleged that the rates from Arkansas points are unreasonable and unduly prejudicial by comparison with corresponding rates from Memphis, Tenn., New Orleans, La., and interior Louisiana and Texas points. The Chamber of Commerce of Houston, the Beaumont Chamber of Commerce, the Lake Charles Rice Milling Company, and the New Orleans Board of Trade intervened on behalf of rice millers in Houston and Beaumont, Tex., Lake Charles, La., and New Orleans. Portions of Fourth Section Applications Nos. 637, 1618, 1867, 2194, 2045, 1951, 1952, 4218, 4219, 4220, 2138, 488, 458, 799, 4865, 4944, and 4964, by which authority is sought to continue to charge for the transportation of clean rice and rice products from Arkansas to destinations in the territories named in the complaint rates which are lower than rates contemporaneously maintained from intermediate points, or rates which are higher than the rates in effect from more distant points, were heard with the complaint.

Rice is grown in eastern and southern Louisiana, southeastern Texas, and in a limited area in central eastern Arkansas. The production in Arkansas is confined to a territory of approximately 200 miles in circumference, and in Louisiana and Texas to a belt about 50 miles wide from north to south and 400 miles long from east to west. Rough rice, as it comes from the thresher, is similar in appearance to wheat, oats, and barley, particularly the latter. Complainant's witness testified that a barrel of 162 pounds of rough rice will produce about 107.4 pounds of clean rice, 13.94 pounds of bran, 5.65 pounds of polish, and 35.01 pounds of hulls and waste. The bran and polish are used in the manufacture of stock foods and the hulls for fuel. Brewers' rice, which is used in the making of malt, is the rice finely broken in the milling process. Rice flour, a product of cleaned rice, is similar to wheat flour, but of less value, and is used as a substitute for and for mixing with wheat flour. Rice flour is sold by only one of the six rice mills in Arkansas, the DeWitt Rice Milling Company, and only three cars were shipped during the past milling season.

Except where particular circumstances control the maintenance of rates from one locality, the rates from the different producing and milling points are related. The producing points are grouped and the same rates apply generally from each mill in the group. Thus the rates on clean rice from the five milling points in Arkansas, namely, Carlisle, Lonoke, Wheatley, Stuttgart, and DeWitt, to all

interstate destinations are, with a few exceptions, the same, and in the main bear a definite relationship to the rates from New Orleans, interior Louisiana, and Texas to the same destinations. The history of the development of the rice rates is stated of record, briefly, as follows:

The first rice mill erected was in New Orleans, and the first rates on clean rice were from New Orleans to the Ohio and Mississippi river crossings. These rates were made to meet the competition of water carriers on the rivers and were established with a view to aiding the development of the rice-milling industry at New Orleans. The original rates from New Orleans were increased 2 cents per 100 pounds in 1908, and a later increase of 5 cents per 100 pounds was found justified in *Rice from Texas and Louisiana*, 40 I. C. C., 285. After the milling industry had been established at New Orleans other mills were built in interior Louisiana and in Texas nearer to the rice fields, and the rates established from these interior mills were based on the rates from New Orleans and so adjusted as to permit competition with New Orleans in the consuming markets. Rates and differences between rates are stated in cents per 100 pounds.

The relationship of rates as between Texas mill cities, on the one hand, and New Orleans on the other, to central freight association territory, Illinois, the Pacific coast, and the southeast, was considered in *Mutual Rice Trade & Devel. Asso. Houston v. I. & G. N. R. R.*, 23 I. C. C., 219. The original adjustments whereby the car-load rates on clean rice from Texas were 10 cents higher than from New Orleans to central freight association territory east of the Indiana-Illinois state line, 5 cents higher than the rates from New Orleans to points in Illinois, and the same as the New Orleans rates to the Pacific coast, were found justified. The effect of this was to approve the group adjustment adopted by the carriers. To points in the southeast rates from Texas were required to be established on the basis of at least 5 cents less than the combination of local rates to and from New Orleans where the rates from New Orleans were on an any-quantity basis.

In 1904 or 1905 mills were constructed in Arkansas. The rates previously established from New Orleans and other southern mills were used as a guide in determining the rates from Arkansas. The milling of rice in Memphis was undertaken in 1911. The rates from Memphis to the Ohio River and points north thereof bear a relationship to the rates from New Orleans which was prescribed by us in *Memphis Freight Bureau v. I. C. R. R. Co.*, 30 I. C. C., 471.

Generally speaking, the present adjustments as between the three principal rice-milling districts to destinations in the territories here

in question, referring particularly to the rates on clean rice, which are the most important, are as follows: To New England freight association and trunk line territories all-rail rates from Arkansas and from interior Louisiana and Texas are constructed by combination on the Mississippi River crossings. This is the customary basis for constructing class and commodity rates from points west of the Mississippi River to points east thereof and in this respect the rice rates do not differ from rates on other commodities. Rail-and-water rates from Arkansas to Atlantic seaboard territory are 5 cents higher than corresponding rates from interior Louisiana and Texas, any disadvantage to Arkansas in this instance being compensated by a corresponding advantage in reaching other markets. To central freight association territory, where the rates from interior Louisiana and Texas are 10 cents higher than from New Orleans, the rates from Arkansas are 5 cents higher than from New Orleans, or 5 cents lower than from the southern rice belt. This is the general basis; but it frequently occurs that the combinations of local rates from Arkansas produce lower through rates, so, in fact, the advantage of Arkansas over Louisiana and Texas is often more than 5 cents. To western trunk line territory the Arkansas rates are usually 5 cents lower than, and to Oklahoma the same as, the rates from interior Louisiana and Texas.

These rate relationships are shown in the subjoined table, in which Stuttgart is taken as representative of the Arkansas milling points and Crowley, La., as representative of the milling points in interior Louisiana and Texas:

*Rates on clean rice from Stuttgart, Ark., Crowley, La., New Orleans, La., and Memphis, Tenn., to typical destinations in New England freight association territory, trunk line territory, central freight association territory, western trunk line territory, and Oklahoma.*

#### NEW ENGLAND FREIGHT ASSOCIATION AND TRUNK LINE TERRITORIES.

	Stuttgart.		Crowley.		New Orleans.		Memphis.	
	Miles. <sup>1</sup>	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.
All rail:								
Baltimore.....	1,080	50.8	1,324	54	1,158	40	971	32.8
Philadelphia.....	1,175	51.8	1,419	55	1,253	41	1,066	33.8
New York.....	1,265	53.8	1,510	59	1,344	45	1,156	35.8
Boston.....	1,477	55.8	1,722	61	1,556	47	1,368	37.8
Albany.....	1,354	52.6	1,652	59	1,486	45	1,245	34.6
Syracuse.....	1,206	48.9	1,506	52	1,430	38	1,097	30.9
Rail and water.								
Baltimore.....		49		44		35		30.8
Philadelphia.....		40		35		35		31.8
New York.....		40		35		33		33.8
Boston.....		49		44		44		35.8

<sup>1</sup> Distances, except to New England and trunk line territories, are the averages from the Arkansas mills 47 I. C. C.



*Rates on clean rice from Stuttgart, Ark., Crowley, La., New Orleans, La., and Memphis, Tenn., etc.—Continued.*

CENTRAL FREIGHT ASSOCIATION TERRITORY.

	Stuttgart.		Crowley.		New Orleans.		Memphis.	
	Miles. <sup>1</sup>	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.
Evansville.....	3 414	34	3 751	39	704	29	308	24
Fort Wayne.....	4 653	37.7	3 1,012	43	986	33	590	28
Indianapolis.....	6 550	35.1	7 901	45	872	35	476	30
Cincinnati.....	3 609	36.7	3 946	42	836	32	503	27
Akron.....	3 860	40.9	3 1,197	47	1,087	37	739	39
Toledo.....	4 748	39.8	3 1,107	47	1,040	37	685	33
Buffalo.....	4 1,021	42	3 1,380	47	1,281	37	948	24.4

WESTERN TRUNK LINE TERRITORY.

Cairo.....	273	23	624	32	566	27	170	23
St. Louis.....	361	28	703	34	718	29	306	24
Chicago.....	621	35	980	40	930	35	534	30
Des Moines.....	701	36	1,011	41	1,053	41	645	39
St. Paul.....	937	43	1,271	48	1,263	43	872	45
Kansas City.....	499	33	791	33	863	33	434	27
Omaha.....	693	36	985	36	1,062	41	678	39

OKLAHOMA.

Ardmore.....	336	44	514	44	591	49	471	44
Enid.....	489	44	737	44	814	49	574	49
MoAlester.....	282	39	529	44	606	44	367	34
Muskogee.....	291	44	619	44	696	44	376	39
Oklahoma City.....	402	44	649	44	726	49	487	39

<sup>1</sup> Distances, except to New England and trunk line territories, are the averages from the Arkansas mills.  
<sup>2</sup> Via Memphis.  
<sup>3</sup> Via Alexandria and Memphis.  
<sup>4</sup> Via Thebes.  
<sup>5</sup> Via Alexandria and Thebes.  
<sup>6</sup> Via Cairo.  
<sup>7</sup> Via Alexandria and Cairo.  
<sup>8</sup> Rates apply via one or more of Arkansas mill points.

The rates on brewers' rice or rice products from Arkansas do not bear the same fixed relationship to the rates from interior Louisiana or New Orleans, except perhaps to central freight association and western trunk line territories, but have been established from time to time as the traffic developed. The same principles, however, which governed the carriers in establishing the rates on clean rice are said to be applicable to rates on the products.

The allegations of unreasonableness and undue prejudice in the adjustment of rates from Arkansas are predicated largely on the fact that the distances from Arkansas to all the destination territories specified in the complaint are less than from New Orleans and interior Louisiana. For example, the average distance from the Arkansas mills to 12 representative destinations in New England and trunk line territories is shown to be 113 miles less than the average distance from New Orleans to the same destinations, and 275 miles less than the average distance from Crowley. The average distance

from Arkansas to 27 destinations in central freight association territory is given as 281 miles less than from New Orleans and 351 miles less than from Crowley. The differences in distances are substantially the same to points in western trunk line territory and Oklahoma.

Complainant argues that a comparison of the rates and distances from Arkansas, New Orleans, and interior Louisiana affords indisputable proof of the relative unreasonableness and prejudicial character of the rates from Arkansas. But the primary object sought to be attained when the gradual expansion of the rice-producing territory and construction of mills in the interior required the initial publication of rates on this traffic was to enable the millers in each locality to reach the consuming markets upon substantially equal terms. Distances, therefore, were largely ignored and the rates established on the group basis. The rates from New Orleans to the Ohio River and upper Mississippi River crossings, to which rates from the interior were differentially related, were established in competition with water carriers operating from New Orleans to the north, and, like other rates from New Orleans, were lower than to intermediate points. The defendants urge, therefore, that by reason of the method used in constructing rates from interior mills Arkansas, interior Louisiana, and Texas have received the benefit of a depressed rate adjustment due to the water-compelled rates from New Orleans.

In *Memphis Freight Bureau v. I. C. R. R. Co.*, *supra*, the shorter distance from Memphis to the Ohio River and points beyond was urged as justifying a differential of 9 cents on clean rice and 5 cents on brewers' rice under the rates from New Orleans. We said, pages 474 and 475:

Memphis is 396 miles north of New Orleans and complainant's request for the differentials stated under New Orleans is based mainly on the substantial difference in distance to the Ohio River crossings from the two points and the fact, which is admitted by defendants, that water competition is at least as effective at the one as at the other. The issue of discrimination, however, can not be considered with reference alone to the relative distances from those two points, but weight must be given to all of the circumstances surrounding the transportation of rice from this general section, the relationship of rates from the various milling points, and the probable effect thereon of substantial reductions from Memphis. The present adjustment, which as stated it is claimed would be completely disrupted if the reductions asked by complainant were made, is the result of competition between carriers and markets and appears not to have been governed to any considerable extent by the relative distances to the points of consumption.

Our conclusion was that the rates from Memphis should be 5 cents less on clean rice and from 1 cent to 3 cents less on brewers' rice than from New Orleans.

The group adjustment of rates on clean rice from southern producing points was before us in *Rice from Texas and Louisiana, supra*. Uniform increases of 5 cents in the rates on clean rice from producing points in Texas, Louisiana, and Arkansas and from New Orleans and Memphis to the territories here under consideration were, with but few exceptions, found justified. Increased local and proportional rates to destinations not included in the tariffs suspended in *Rice from Texas and Louisiana, supra*, were subsequently considered and for the most part found justified in *Rice from Texas and Louisiana, No. 2*, 43 I. C. C., 29.

We can not find upon the record now before us that the group adjustment, considered as a whole, should be condemned as unduly prejudicial to the Arkansas shippers.

In support of the contention that the rates on rice from Arkansas are unreasonable *per se*, complainant cites rates on cereals and cereal products from Arkansas and from points in other sections of the country for comparable distances. Rice is a cereal similar, as stated, to wheat, oats, and barley, and competes to a certain extent with cooked and uncooked cereal products such as grape nuts, cream of wheat, postum, oatmeal, rolled oats, grits, hominy, etc. It is of less value than the cereal products mentioned, is less susceptible to damage in transit, and, with the exception of oatmeal, rolled oats, and grape nuts, loads more heavily. It is, therefore, urged that the rates on rice should not exceed the rates on cereals, or, in any event, the rates on cereal products.

Many of the comparisons relied upon by complainant are with rates on cereal products from Arkansas. There is no movement of cereal products from Arkansas to interstate destinations, and such comparisons are therefore without practical significance. There is also little or no movement of grain from Arkansas. Other comparisons are with rates on corn, wheat, and cereal products from Minneapolis, Minn., Cedar Rapids, Iowa, Chicago, and Kansas City.

A comparison of the rates on cereals and cereal products from points such as Chicago, Kansas City, and Minneapolis with the rates on rice from Arkansas is not persuasive. The transportation is over different lines in different sections of the country, and the circumstances and conditions are dissimilar. Unlike corn and wheat, the production of rice is confined to limited territories, and the consuming markets for the product of each locality must cover a more extensive portion of the country. This, defendants urge, is an inherent condition that differentiates rice from other cereals and cereal products.

Other comparisons were offered, both by complainant and defendants, such, for example, as with rates on cottonseed oil, cotton-

seed meal, compressed cotton, lumber, and peaches, from points in Arkansas to various destinations. We deem it unnecessary to discuss these comparisons in detail.

As stated, the all-rail rates on rice from Arkansas milling points to destinations in New England freight association and trunk line territories are constructed by combining the rates to and from Memphis. The rates on clean rice from Memphis are the sixth-class rates. The rate from all Arkansas points to Memphis is a commodity rate of 18 cents, increased from 13 cents following *Rice from Texas and Louisiana, No. 2, supra*. The reasonableness of this 18-cent rate is before us on rehearing and will be determined thereunder. The rates east of Memphis have not been shown to be unreasonable or unduly prejudicial.

Rail-and-water rates from interior points to Atlantic seaboard territory are usually based on New York, the rates to other ports being differentials under or over New York. The rate to Philadelphia, for example, is usually 2 cents lower than that to New York, to Baltimore 3 cents lower than to New York, and to Boston 2 cents higher than to New York. The rail-and-water rates are usually 2 cents lower than the all-rail rates. These differentials, however, are not observed in making rates on rice from Arkansas or from interior Louisiana and Texas. If the Arkansas rates were constructed by combining the local rate of 18 cents to Memphis and the rail-and-water rates from Memphis to the destinations named, the present rates, except to Baltimore, would be materially increased. For example, the rail-and-water rate on clean rice to New York, which is now 40 cents, would be 51.8 cents. The rail-and-water rates on rice and its products are not shown to be unreasonable or unduly prejudicial.

The general basis of rates from Arkansas to points in central freight association and western trunk line territories has been stated. Item 1522-E of southwestern lines' tariff, Leland's I. C. C. No. 1001, provides that rates on clean rice, in carloads, from points in Arkansas to destinations in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin, also to Buffalo, N. Y., Pittsburgh, Pa., and other destinations in New York and Pennsylvania except where rates are specifically published, will be 5 cents lower than rates on clean rice from Louisiana group 1, which includes the interior Louisiana mills. Item 42-D in the same tariff provides that rates on brewers' rice, rice hulls, rice bran, and rice polish, in carloads, from Arkansas producing points to destinations in central freight association territory, except where through rates are published, will be 3 cents per 100 pounds lower than rates from Louisiana group 1

points. The above provisions are open to the criticism that they are of general application in the absence of specific rates and in many instances provide rates that unlawfully exceed the aggregates of the intermediate rates subject to the act. Except in this particular we do not find the rates to central freight association territory or western trunk line territory to be unreasonable or unduly prejudicial to the Arkansas shippers.

The rates on clean rice from Arkansas and Memphis to representative destinations in Oklahoma have been stated, but for convenience we restate them, together with rates on brewers' rice, rice bran, and rice flour:

*Comparison of rates on clean rice, brewers' rice, rice bran, and rice flour from Arkansas and Memphis to destinations in Oklahoma.*

To—	From Arkansas mills.					From Memphis.				
	Dis- tance.	Clean rice.	Brew- ers' rice.	Rice bran.	Rice flour.	Dis- tance.	Clean rice.	Brew- ers' rice.	Rice bran. <sup>1</sup>	Rice flour. <sup>2</sup>
	Miles.	Cents.	Cents.	Cents.	Cents.	Miles.	Cents.	Cents.	Cents.	Cents.
Ardmore.....	386	44	41	20	47	471	44	44	62	70
Enid.....	489	44	41	20	47	574	49	49	53	63
McAlester.....	282	39	36	20	42	367	34	34	36½	45
Muskogee.....	291	44	41	20	47	376	39	39	44	48
Oklahoma City.....	402	44	41	20	47	487	39	39	50	58

<sup>1</sup> Class B rates.

<sup>2</sup> Fifth-class rates.

It will be observed that to three of the points the rates on clean rice and brewers' rice from Arkansas are higher than those from Memphis, although the Memphis rates apply via the Chicago, Rock Island & Pacific Railway and St. Louis Southwestern Railway, through certain of the Arkansas milling stations. Defendants explain this adjustment by stating that the rates from Arkansas are on a group basis and that, although the rates from Memphis apply via some of the Arkansas milling points, others are not intermediate. The carriers seek authority to continue the present adjustment on the ground that to bring the rates into conformity with the requirements of the fourth section would disrupt the group.

The average short-line distance from the Arkansas mills to the points named in Oklahoma is 370 miles and the average rate on clean rice is 43 cents, yielding 2.32 cents per ton-mile. The rate from Arkansas to St. Louis, approximately the same distance, is 28 cents. The average rate of 43 cents would carry a shipment of clean rice from the same milling points to St. Paul, a distance of 937 miles.

We are of opinion, and find, that the rates on clean rice, brewers' rice, and rice flour from Arkansas to the stations in Oklahoma

named below are unreasonable, and for the future should not exceed, in cents per 100 pounds, the following:

From Carlisle, Lonoke, Wheatley, Stuttgart, and DeWitt, Ark., to —	Clean rice.	Brewers' rice.	Rice flour.
Ardmore.....	39	36	42
McAlester.....	34	31	37
Muskogee.....	34	31	37
Oklahoma City.....	39	36	42

The rates to Enid do not appear to be unreasonable.

The publication of the rates herein found reasonable will bring the adjustment to these points via the Chicago, Rock Island & Pacific Railway into conformity with the fourth section. Rates to intermediate points should be correspondingly revised.

The St. Louis Southwestern Railway asks that it be permitted to continue to meet the rates of the direct lines from Arkansas points to destinations in Oklahoma via its circuitous route through Fort Worth, Tex., or Sherman, Tex., and to maintain higher rates at its stations in Texas west of Texarkana, Ark.-Tex., but the extent to which the short-line distances are exceeded is not stated of record nor are the rates to intermediate points shown. The facts submitted by that carrier do not warrant a finding that fourth section relief should be granted. Defendants have not made any substantial effort to justify the departures from the rules of the fourth section of the act that are covered by the applications for relief that were set for hearing. Apparently there are no departures from the long-and-short-haul rule in the rates on clean rice and rice products from Arkansas to the destination territories named in the complaint other than in Oklahoma and west thereof, but to the extent that such departures may exist they have not been justified. Fourth section relief will be denied.

Orders will be entered conforming to the findings herein.

47 L. C. C.



**FOURTH SECTION APPLICATIONS NOS. 4966 AND 10483.**  
**RATES BETWEEN CENTRAL FREIGHT ASSOCIATION**  
**TERRITORY AND POINTS ON THE CHESAPEAKE &**  
**OHIO RAILWAY, LEXINGTON DISTRICT.**

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*Submitted September 14, 1917. Decided December 15, 1917.*

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Fourth section relief granted the Chesapeake & Ohio Railway and its connections to continue lower rates between central freight association territory on the one hand and Ashland and Louisville, Ky., on the other than are contemporaneously in effect on like traffic to and from intermediate points on the Lexington district of the Chesapeake & Ohio Railway between Ashland and Louisville.

*A. P. Gilbert* for Chesapeake & Ohio Railway.

*J. V. Norman, John S. Kelley, jr., J. W. Ramsey, and H. L. Burch* for Lexington Board of Trade and Shelbyville Business Men's Association.

**REPORT OF THE COMMISSION.**

**DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.**

**BY DIVISION 2:**

The Chesapeake & Ohio Railway and its interested connections seek authority to continue or establish rates on classes and commodities between points in central freight association territory on the one hand and points on the Lexington district of the Chesapeake & Ohio Railway between Ashland and Louisville, Ky., on the other which are higher than rates contemporaneously in effect on like traffic to and from Louisville and Ashland, Ky.

The main line of the Chesapeake & Ohio extends from Fort Monroe, Va., to the Ohio River at Huntington, W. Va., and thence along the south bank of that river to Cincinnati, Ohio. It connects at Charleston, W. Va., with the Kanawha & Michigan; at Kenova, W. Va., with the Norfolk & Western; at Ironton, Ohio, and Ashland, Ky., with the Detroit, Toledo & Ironton; and at Cincinnati with various lines. The Lexington district of the Chesapeake & Ohio diverges from the main line at Ashland, Ky., and extends west to Louisville. From Ashland to Seaton, Ky., a point 22 miles west of Ashland, the Chesapeake & Ohio operates over the rails of the Ashland Coal & Iron Railway Company and between Lexington and Louisville, Ky., a distance of 84 miles, it uses the rails of the Louisville & Nashville. Under the terms of the contracts by virtue of which it uses the tracks of these two companies, it can not engage

in traffic originating at or destined to points between Seaton and Ashland on the Ashland Coal & Iron Railway, or between Lexington and Louisville on the Louisville & Nashville.

Traffic from central freight association territory destined to Louisville via the Chesapeake & Ohio may move through Charleston, Kenova, Ashland, or Cincinnati, while traffic destined to Ashland may be forwarded through Louisville or Cincinnati. The petitioner asserts that only a small proportion of the traffic between central freight association territory and Ashland moves via Louisville, and such as does move via that route originates at or is destined to points on or reached via the Chicago, Indianapolis & Louisville, Southern Railway, or Louisville & Nashville, which have points of interchange with the petitioner's line at Louisville, and that the remainder, which consists of approximately 90 per cent of the Ashland business, moves via Cincinnati. It is also asserted that practically the only Louisville traffic routed via Ashland is that which originates at or is destined to points on the Scioto Valley division of the Norfolk & Western, the Kanawha & Michigan, or the Detroit, Toledo & Ironton, which interchange with the Chesapeake & Ohio at Charleston, Kenova, or Ashland. Some of the tariffs naming rates to and from Ashland and Louisville are, however, unrestricted as to routing, and therefore permit routing via either of these gateways.

Rates between central freight association territory and Louisville and Ashland are based on the C. F. A. distance scale. These rates generally conform to the provisions of the fourth section via the shorter routes operating north of the Ohio River but are considerably lower than rates to intermediate points on the Lexington district of the Chesapeake & Ohio. The general basis for rates between central freight association territory and intermediate points on the Lexington district is the lowest combination on Cincinnati, Louisville, Ashland, or other junction points, and is the same as the basis generally used in constructing rates between points in central freight association territory and points on other lines operating south of the Ohio River. There are a number of joint tariffs, however, naming class and commodity rates from central freight association territory to Louisville and Ashland in which the Chesapeake & Ohio is shown as a participating line, and some of these tariffs contain provisions for the application to intermediate stations to which rates are not published of rates to more distant points which are published.

The effect of such provisions is to make the rates to intermediate points the same as to Louisville or Ashland. These provisions do not apply to other lines operating south of the Ohio River, which are parties to the same tariffs.

By Fourth Section Application No. 4966 the Chesapeake & Ohio seeks authority to continue rates to Ashland and Louisville that are lower than rates to intermediate points, and by application No. 10483, filed by Eugene Morris, agent, interested carriers seek authority to amend tariffs containing the above provisions so that they will not apply to points on the Lexington district.

Commercial organizations of Lexington and Shelbyville intervened at the hearing in opposition to the granting of these applications but introduced no evidence in relation thereto.

The following table showing class rates from Chicago, Ill., and Columbus, Ohio, to Ashland, Louisville, and intermediate points is illustrative of the adjustment which petitioner desires to continue or establish. Rates throughout this report are stated in cents per 100 pounds:

	1	2	3	4	5	6
.....	53	45	36	37	19	15.5
.....	56	74.5	60	48.5	35	30.5
.....	66	74.5	60	48.5	36	30.5
.....	97.1	82.5	65.4	49	37	28.5
.....	97	81	63	48.5	34	24.5
.....	92.5	76	60.5	45.5	32.5	23.5
.....	85	71	56	41.5	29	22.5
.....	58.5	49.5	39	29.5	20.5	16.5
to—						
.....	39	33	26	19.5	12.5	11
.....	65.5	54.5	43	31.5	22	17
.....	73	59.5	47.5	35.5	25.5	18
.....	77.5	64.5	50	36.5	27	19
.....	87.5	75.5	58.4	41	33	23
.....	72	62.5	51	39.5	31	26.5
.....	72	62.5	51	39.5	31	26.5
.....	60	42.5	34	25.5	18	14.5

Practically all of these rates are the full combinations of local rates to and from Ashland, Louisville, or other junction points of the Chesapeake & Ohio. In support of its applications for relief in respect to the above rates the petitioner urges that rates between central freight association territory and Louisville and Ashland are made to meet the rates via routes which are situated for the most part in the territory north of the Ohio River, where the density of traffic and operating conditions are more favorable than on its Lexington district; that the said rates applied via its lines are less than reasonable; and that the present and proposed rates to intermediate points are not unreasonable. It is also urged that except between St. Louis and neighboring points and Ashland, its route to or from Ashland and Louisville via its Lexington district is longer than the routes north of the Ohio River. The distances between representative points in central freight association territory and Ashland

and Louisville over the Lexington district of the Chesapeake & Ohio and over shorter lines are shown in the following table:

From—	To Ashland, Ky.		To Louisville, Ky.	
	Miles via C. & O.	Miles via short line.	Miles via C. & O.	Miles via short line.
East St. Louis, Ill.....	482	482	689	271
Peoria, Ill.....	549	467	674	341
Chicago, Ill.....	514	431	638	306
Toledo, Ohio.....	523	347	554	315
Cleveland, Ohio.....	584	408	615	376
Pittsburgh, Pa.....	633	297	505	425
Detroit, Mich.....	601	391	599	393
Columbus, Ohio.....	438	147	355	230

Between many of these points and Ashland, Ky., the direct route is via Cincinnati and the Cincinnati division of the Chesapeake & Ohio. The Chesapeake & Ohio in some instances, therefore, forms a part of the shorter routes. The evidence shows, however, that traffic and operating conditions on the Cincinnati division of the Chesapeake & Ohio are more favorable than those on the Lexington district and are comparable with conditions on the lines operating north of the Ohio River. The territory traversed by the Lexington district is rugged and thinly settled, and produces but little traffic; the grades are steep; the density of traffic is considerably less than on the Cincinnati division and the operation more expensive. The Lexington district is included in and, with the exception of about 20 miles of branch-line track, comprises the Ashland division of the Chesapeake & Ohio. The following is a comparative statement of operating statistics on the Ashland and Cincinnati divisions of the Chesapeake & Ohio and also for the entire system for the 10 months ended April, 1916:

	Ashland division.	Cincinnati division.	Entire line.
Net tons moved 1 mile.....	219,863,140	1,927,009,896	9,025,136,325
Net tons per locomotive-mile.....	312	1,802	931
Net tons per train-mile.....	388	1,815	1,058
Locomotives per train-mile.....	1.24	1.01	1.14
Net tons per loaded car-mile.....	20.83	39.53	36.12
Conducting transportation expense in mills per net ton-mile....	2.080	.650	1.054
Road mileage.....	232.1	161.4	2,374.3
Net tons per mile of road.....	947,278	11,929,343	3,801,173

It will be observed from the above figures that as to every element that affects the cost of transportation of which a comparison is made, the conditions on the Ashland branch are considerably less favorable than those on the Cincinnati division and elsewhere on the system. Other statistics introduced by petitioner, which it is unnecessary to reproduce, show that the Ashland district is the least productive and

most expensive to operate of any in the entire system. Because of these conditions the petitioner contends that this branch should be considered in the same class with other lines south of the Ohio River which, because of less favorable operating and traffic conditions, maintain a higher level of rates than that which prevails north of that river.

The rates which the petitioner desires to continue or apply to or from intermediate points are relatively high when compared with rates to or from Louisville and Ashland. They are generally lower, however, than are charged for like distances to points similarly situated on other lines operating in the same territory, and when considered in the light of this fact and of the unfavorable conditions of operation on the Lexington district, they do not appear to be unreasonable.

In view of these circumstances and of the generally circuitous character of the petitioner's route, we are of opinion that the situation presented constitutes a special case within the meaning of the fourth section and that except as otherwise provided herein petitioner should be permitted to continue to meet the rates of shorter lines between Louisville and Ashland and central freight association territory, and to maintain higher rates to and from intermediate points on its Lexington district, upon the following conditions:

1. That the present rates to and from the intermediate points shall not be increased except as may hereafter be authorized by some order of this Commission, and shall in no instance exceed the lowest combination.

2. That the rate on any commodity to or from any intermediate point shall not exceed the rate on the same commodity to or from the next more distant point to or from which a lower rate is charged by a greater amount than the rate to or from the intermediate point on the class to which the commodity belongs exceeds the rate on the corresponding class to or from the more distant point.

We are also of opinion that tariffs naming rates between points in central freight association territory and Louisville and Ashland which contain provisions for the application of the rates to or from intermediate points may properly be amended so that the said provisions will not apply to the Lexington district of the Chesapeake & Ohio Railway.

It will be observed from the table of distances on page 579 of this report that there are several instances in which the route of the Chesapeake & Ohio is much longer than the more direct lines, namely, between Ashland, on the one hand, and Pittsburgh and Columbus on the other, and between Louisville, on the one hand, and East St. Louis, Peoria, and Chicago, on the other. We have fre-

quently held that relief should not be granted for the purpose of permitting such extremely circuitous routes to compete with the direct lines. *Class and Commodity Rates*, 38 I. C. C., 411; *C. F. A. Class Scale Case*, 46 I. C. C., 475. Fourth section relief to continue rates between Ashland or Louisville and the above-mentioned points which do not conform to the provision of the fourth section will therefore be denied, and if it later appears that the petitioners are continuing rates of this character between Ashland or Louisville and other points via routes which are so extremely circuitous, appropriate orders of denial will be entered.

An order in conformity with these findings will be issued.

47 I. C. C.

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No. 7939.<sup>1</sup>

McCAULL-DINSMORE COMPANY

v.

GREAT NORTHERN RAILWAY COMPANY.

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*Submitted February 16, 1917. Decided December 17, 1917.*

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Former finding that certain unrouted carload shipments of bulk corn between points in Minnesota were misrouted by having been transported over a higher rated interstate route, while a lower rated intrastate route was available, reversed on reargument. Complaints will be dismissed unless complainants shall apply for further hearing on the reasonableness of the interstate rates charged.

No appearance for complainants.

*John F. Finerty* for defendant.

REPORT OF THE COMMISSION ON REARGUMENT.

BY THE COMMISSION:

In our former report, 41 I. C. C., 178, we found, following *Lathrop Lumber Co. v. A. G. S. R. R. Co.*, 27 I. C. C., 250, that three unrouted carloads of corn shipped over an interstate route from Danvers, Appleton, and De Graff, Minn., to Thief River Falls and Crookston, Minn., were misrouted by defendant in that lower rates were applicable over a somewhat longer intrastate route and awarded reparation accordingly. Upon petition by defendant the case was reopened for further argument.

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<sup>1</sup> The report also embraces No. 7939 (Sub-No. 1.), *James A. Gould v. Same*.  
47 I. C. C.



Defendant challenges our jurisdiction to award reparation on the basis of intrastate routes and rates and, as well, our decision on the merits. In the latter behalf it is contended that the intrastate route is shown to be unreasonable by the undisputed testimony that transportation over that route would require an out of line diversion from the natural route by a main line to another main line over the heavier grades of the connecting branch from Tintah to Evansville, 33 miles in length; that this branch traverses a sparsely settled section that requires and is furnished only a triweekly service for the accommodation of strictly local traffic; that because of the physical character of the branch, which is constructed of light steel and unballasted, through trains are not and can not be operated over it with safety; that through traffic is sent that way only in emergency cases, and then requires a transfer between the accommodation trains and the through trains at both ends of the branch; that the branch was used to relieve the congestion of grain shipments during the heavy crop season of 1912, but not since, and only eastbound grain would be so handled; and that on northbound traffic, such as were the shipments in question, the intrastate route would be unnatural and uneconomic. Defendant points out that these considerations were absent in *Lathrop Lumber Co. v. A. G. S. R. R. Co.*, *supra*.

Waiving the question of our jurisdiction, and upon a careful reconsideration of all the facts of record, we are persuaded, and now find, that the intrastate route in this case was neither reasonable nor practicable. The rates under attack were assessed in conformity with the general distance tariffs of defendant, applicable on interstate shipments. While the reasonableness of the rates charged is formally put in issue, the complainants, apparently relying upon our decision in *Lathrop Lumber Co. v. A. G. S. R. R. Co.*, *supra*, confined their testimony to a presentation of facts tending to prove that the shipments were misrouted, with resulting damage measured by the difference between the interstate rates charged and the lower rates applicable over the intrastate routes. In view of all the circumstances, the complainants may, if they so desire, apply to us within 30 days from the date of the service of this report upon them for further hearing upon the question of the reasonableness of the interstate rates charged; and in default of such application, an order will be entered dismissing the complaints.

INVESTIGATION AND SUSPENSION DOCKET No. 1011.<sup>1</sup>  
SWITCHING ABSORPTIONS.

*Submitted November 2, 1917. Decided December 22, 1917.*

1. A switching charge of 1 cent per 100 pounds, minimum \$6 per car, assessed and proposed at Minneapolis, Minn., against connecting line carriers where they provide for absorption of switching charges, and assessed and proposed by the Chicago, Milwaukee & St. Paul Railway whether payable by shippers or absorbed by connecting lines, found not justified.
2. Proposed increase in the intermediate switching charge of the Railway Transfer Company of Minneapolis and increased switching charges of the Minneapolis & St. Louis Railroad for intermediate switching performed for connecting carriers at Minneapolis, found not justified.
3. Proposed tariff changes limiting the amount of switching charges absorbed by the Minneapolis, St. Paul & Sault Ste. Marie Railway Company, found justified.
4. Refusal of carriers to absorb switching charges on inbound grain at Minneapolis not shown to be unreasonable or otherwise unlawful.

*W. P. Trickett, T. A. McGrath, and F. W. Burton* for Minneapolis Traffic Association.

*Cobb, Wheelright & Dille; John I. Dille; and H. E. White* for Minneapolis Steel & Machinery Company.

*E. H. Berg and J. H. Beek* for St. Paul Association of Public and Business Affairs.

*A. L. Flinn and Henry C. Flannery* for Minnesota Railroad and Warehouse Commission.

*F. M. Miner and M. M. Joyce* for Railway Transfer Company of City of Minneapolis.

*Albert H. Lossow, H. B. Ramsey, W. D. Burr, Richard L. Kennedy, R. G. Brown, and W. F. Dickinson* for Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Chicago, St. Paul, Minneapolis & Omaha Railway Company, and Chicago, Rock Island & Pacific Railway Company.

*M. M. Joyce, O. W. Dynes, J. G. Morrison, A. G. Briggs, John F. Finerty, J. G. Woodworth, Charles Donnelly, and B. W. Scandrett* for respondents and defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

BY DIVISION 2:

These proceedings involve the switching charges and the switching absorption rules, applicable or proposed, at Minneapolis, St.

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<sup>1</sup> This report also includes Investigation and Suspension Docket No. 1071, Twin Cities Switching, and No. 9645, Minneapolis Traffic Association v. Chicago Great Western Railroad Company et al.

Paul, and Duluth, Minn., Superior, Wis., and other points. The evidence relates almost entirely to Minneapolis, and unless otherwise indicated this report refers to the situation at that point.

For many years prior to January 1, 1917, the charges, whether absorbed by the carrier or paid by the shipper, for switching carload traffic between the interchange tracks of the line-haul carriers and industries located on private or industrial sidetracks served by connecting lines ranged from \$1 to \$5 per car, but in most instances a charge of \$1.50 per car applied. An additional charge of \$1.50 per car was assessed for intermediate switching when the services of an intermediate line were utilized. The absorption rules of the line-haul carriers varied, but, stated generally, they provided for the absorption in full of switching charges on competitive traffic except inbound shipments of grain.

In January, 1917, and later, defendants in No. 9645 established a charge of 1 cent per 100 pounds, minimum \$6 per car, hereinafter called the \$6 charge, for switching between interchange tracks and industries. While in some instances the tariffs did not clearly so provide, it was intended that this charge should be assessed against and absorbed by the line-haul carriers whose tariffs authorized absorptions in whole or in part. The charge for the same switching on intrastate traffic or when paid by the shipper remained unchanged. By complaint filed April 30, 1917, the Minneapolis Traffic Association attacks the \$6 charge as unreasonable, unjustly discriminatory, and unduly prejudicial. It is also alleged that defendant's rules and regulations governing switching charges and absorptions are uncertain, ambiguous, and complex, in violation of section 6 of the act, and that this situation should be corrected by applying the line-haul rate to and from all Minneapolis industries.

By schedules filed to take effect February 1 and March 3, 1917, respectively, respondents in No. 1011, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, hereinafter called the Omaha, and the Minneapolis, St. Paul & Sault Ste. Marie Railway Company, hereinafter called the Soo line, proposed to limit their switching absorptions at Minneapolis, St. Paul, and Duluth, the Omaha to \$3 per car, and the Soo line to various specific amounts equal to the switching charges in effect prior to January 1, 1917, and applicable since then only on intrastate traffic or when paid by shippers. Upon protest of the Minneapolis Traffic Association, the St. Paul Association of Commerce, the Commercial Club of Duluth, and others, these schedules were suspended until June 1 and December 1, 1917, respectively. Prior to the hearing the Omaha canceled its suspended schedules and restored the absorption rules formerly in effect. The

Soo line voluntarily postponed the effective date of its schedules to February 1, 1918.

By schedules filed to take effect April 23 and May 1, 1917, respectively, respondents in No. 1071 proposed, the Minneapolis & St. Louis Railroad to increase from \$1.50 to \$3 per car the intermediate switching charge of the Railway Transfer Company of Minneapolis, hereinafter called the Railway Transfer Company; the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, to establish the \$6 charge at Minneapolis and St. Paul without restriction except that it did not apply on inbound grain. The tariff which the latter schedules purport to cancel limits the charge to competitive traffic. Upon protest by the Minneapolis Traffic Association and the St. Paul Association of Commerce, these schedules were suspended until February 21, 1918.

Complainants and protestants will be designated hereinafter as protestants and the defendants and respondents as respondents.

Minneapolis is served by nine trunk lines, all of which are respondents, except the Chicago, Burlington & Quincy Railroad, which uses the terminals of the Great Northern Railway and performs no revenue switching. It is also served by three terminal or switching lines, viz, the Minneapolis Western Railway Company, owned by the Great Northern; the Railway Transfer Company, owned by the Minneapolis & St. Louis; and the Minneapolis Eastern Railway Company, owned jointly by the Omaha and the Milwaukee. The Minneapolis Eastern has not increased its switching charges and is not a respondent.

The movement to increase switching charges on traffic interchanged with connecting lines was initiated by the Milwaukee, the Great Northern, the Minneapolis & St. Louis, and the Northern Pacific. These lines have extensive terminal facilities and serve the majority of the industries affected. Without offering any satisfactory evidence as to the reasonableness of the \$6 charge they seek to justify it by stating that it was their intention to provide, and that the tariffs, except that of the Milwaukee which it is willing to correct, do provide, that the charge is enforceable only against connecting carriers whose tariffs authorize absorptions; that absorptions by line-haul carriers in effect establish a joint rate, of which the switching charge is a division; and that therefore the switching line has the right to impose a charge which is not only compensatory for its service, but which will prevent the improper and unreasonable use of its terminals by competitors.

The Omaha, the Soo line, and the Chicago, Rock Island & Pacific, hereinafter called the Rock Island, serve fewer industries than do

these respondents. In their behalf it is stated that they established the \$6 charge to offset in some measure the increased charges exacted from them by the other respondents. They urge that the charge is unreasonable and that it unjustly discriminates against them.

We have held that in so far as the shipping public is concerned the effect of a switching absorption is to establish a joint rate, but this does not imply that by tariff provision a switching line may arbitrarily demand for its portion of the service any amount satisfactory to it. Joint rates and divisions thereof result from agreements among carriers or from appropriate action by this Commission when carriers fail or are unable to agree. When joint rates and divisions are established voluntarily one carrier can exact no more than its connections will allow, and it follows that if considered merely as the division of a joint rate the provision for the \$6 charge is not binding upon connecting lines. Manifestly if the amount of the switching charge differs from that which the line-haul carrier offers to absorb and there is no provision for collecting the difference from the shipper, the switching line must accept less or the line-haul carrier must absorb more than is authorized by the tariffs.

Respondents urge that the controversy among the carriers regarding divisions does not affect the protestants or shippers, and therefore that the proceeding should be dismissed. But as we have stated in similar cases, the Commission can not act upon that theory. *Detroit Switching Charges*, 28 I. C. C., 494. *Switching Charges at Milwaukee, Wis.*, 32 I. C. C., 509. The burden is upon respondents to justify the increased charges, and this can not be done by asserting or showing that those formerly in effect afforded unsatisfactory divisions of the through charges. *Lumber Transit Privileges at Buffalo, N. Y.*, 33 I. C. C., 601.

The prime reason for increasing the switching charges was to obtain for the terminal carrier the line haul on competitive traffic by making the charges sufficiently high to preclude their absorption by competing lines. Ordinarily respondents absorb switching charges only on competitive traffic, but there are many exceptions to this rule, and the \$6 charge applies on noncompetitive as well as on competitive traffic. Furthermore, it is exacted by the two terminal or switching roads which, unless their relationship with proprietary lines be considered, are in no sense competitors of the line-haul carriers. It is true, as argued by the respondents who assume to justify the increased charges, that they can not be compelled to give the use of their terminal facilities to competing lines, but this does not mean that they may not be required to perform, upon just and reasonable terms, switching service between connecting lines and industries located on their own rails. *Merchants & Manufacturers Assn. v. P.*



*R. R. Co.*, 23 I. C. C., 474. *Iowa & Southwestern Ry. Co. v. C., B. & Q. R. R. Co.*, 32 I. C. C., 172. In determining the amount of the switching charge it is proper to consider the value of the service rendered and the facilities used, and the circumstance that the terminal carrier has been deprived of the line haul. The charge properly may be adequate for the terminal service considered by itself, but its actual or possible absorption by a competing line furnishes no criterion of what is a reasonable charge. *Seattle Chamber of Commerce v. G. N. Ry. Co.*, 30 I. C. C., 683. In a proceeding to determine the propriety of switching charges absorbed by carriers, the Commission must consider them as though they were to be charged for by the railroad rendering the service, and paid for by the shipper. *Detroit Switching Charges, supra*.

The complaint in No. 9645 also assails an intermediate switching charge of \$3 per car, increased from \$1.50 per car on January 5, 1917, by the Minneapolis & St. Louis. That carrier's tariff, under suspension in No. 1071, proposed a like charge for intermediate switching by its subsidiary, the Railway Transfer Company, a line 1.58 miles in length, which serves, among other industries, 10 flour mills with a combined average daily capacity of 42,700 barrels, and connects directly with all the trunk lines. Prior to February 1, 1915, the Railway Transfer Company charged for switching between industries on its line and its interchange tracks with the Minneapolis & St. Louis. On and after that date it was prohibited by the Minnesota Railroad and Warehouse Commission from making a separate charge for handling intrastate traffic of the parent company. Since the hearing these respondents have also eliminated such charges on interstate traffic. They point to the resultant loss of revenue and urge that shippers are not much affected by the proposed increased intermediate switching charge, because in most instances it is absorbed, and, with few exceptions, the service is performed merely for the convenience of carriers having more indirect routes. No attempt was made to justify the increased charges which would result from nonabsorption, nor was any justification offered of the increased intermediate switching charge of the Minneapolis & St. Louis.

The switching movements of the Railway Transfer Company are for distances ranging from 200 feet to 3,000 feet. All other carriers, except the Minneapolis & St. Louis, charge \$1.50 per car for intermediate switching and, as stated, the Railway Transfer Company and all other respondents usually charge \$1.50 per car for direct switching where the charges are paid by the shipper. Neither of these carriers offered any evidence concerning the cost of service nor furnished other information which would enable us to determine



that the increased charge is reasonable. The desire of the Railway Transfer Company to make its charge for intermediate switching the same as that of the Minneapolis & St. Louis does not afford sufficient justification. It appears that the latter carrier does but little, if any, intermediate switching.

It is apparent from the record that protestants' interest in these proceedings arises principally from respondents' refusal to absorb switching charges on inbound grain as they do on other commodities requiring the same or similar switching service. Complainant in No. 9645 contends that this results in undue prejudice against receivers of grain, but offered little evidence in support of that assertion. Respondents explain that the present practice has been followed for many years; contend that it is justified by dissimilar competitive conditions; and urge that the enormous growth of the grain industry at Minneapolis proves that the nonabsorption of switching charges on grain has not prejudiced that market.

Evidence was offered designed to show that respondents' refusal to absorb switching charges on inbound grain at Minneapolis while making such absorptions at other and competing grain markets results in undue prejudice and disadvantage. Respondents' objection to the admission of this evidence is sustained, for that issue was not raised by the complaint. *Stuarts Draft Milling Co. v. Southern Ry.*, 31 I. C. C., 623.

It is also contended that the varying absorption rules published by each individual carrier unnecessarily complicate the switching situation and make uncertain the charges applicable on particular shipments. The publication of a joint tariff providing for application of the line-haul rate on all traffic to and from all Minneapolis industries is suggested as a remedy, but we have no authority to require such action. No particular instances of ambiguous or uncertain tariff provisions are cited.

Respondents assert that the switching charges at Minneapolis are less than reasonable, and protestants concede that they are comparatively low. It appears that the present charges payable by shippers were established many years ago and do not reflect the subsequent increases in the average loading of cars or in the cost of service. They are materially lower than the switching charges imposed at other points where the conditions are fairly comparable with those at Minneapolis. It may be that the switching charges might properly be increased to some extent, but the record affords no justification for the increased charges or the proposed increased charges involved in these proceedings, and we so find.

We further find that, except in the respects heretofore stated, neither the switching charges payable by shippers nor respondents'

rules and practices governing the absorption of switching charges are shown to be unreasonable or otherwise unlawful.

Apparently the cancellation of the increased switching charges herein assailed will eliminate the principal reasons for the publication of the limited absorptions named in the schedules of the Soo line suspended in No. 1011. These schedules do not increase the charges to be paid by shippers or involve any change in the carriers' regulations or practices except to substitute specific absorptions for the present blanket provision. The order of suspension in No. 1011 will be vacated.

Appropriate orders will be entered.

47 I. C. C.

**INVESTIGATION AND SUSPENSION DOCKET No. 1050.**  
**RECONSIGNMENT CASE.**

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*Submitted October 26, 1917. Decided December 24, 1917.*

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Upon consideration of increased charges and changes in regulations affecting the diversion or reconsignment of carload shipments, proposed by practically all of the carriers of the country; *Held:*

1. Proposed charges of \$2 and \$5 per car for change in name of consignor justified to the extent that they do not exceed \$1 per car.
2. Rule providing that if request is made for the diversion or reconsignment of freight in carloads the carrier will make diligent effort to locate the shipment and effect the desired service, but will not be responsible for failure to do so unless such failure is due to negligence of its employees, justified as a continuation of the rule now in effect.
3. Proposed charge of \$2 per car for diversion or reconsignment in transit prior to arrival of shipment at original destination or terminal yard serving that destination justified.
4. Proposed charge of \$2 per car for diversion or reconsignment when order for that service is placed at billed destination in time to permit instructions to be given to yard employees prior to the arrival of the car justified.
5. Proposed charge of \$2 per car for stopping car prior to arrival at billed destination to be held for orders justified.
6. Proposed charge of \$5 per car for diversion or reconsignment at original destination to a point outside the switching limits, on orders received by the carrier after arrival, or too late to permit instructions to be given to yard employees before arrival, justified; but held that the same charge proposed for reforwarding to a similar point cars which have been placed for unloading but have not been unloaded has been justified only in so far as such charge will be lawful under the fourth section when considered in connection with the charges approved in rule 7.
7. Proposed charge of local tariff rates for reforwarding to a point within the switching limits cars which have been placed for unloading but have not been unloaded found justified.
8. Proposed rule found justified providing that—
  - (a) A single change in the name of the consignee at first destination, and (or) a single change in the designation of his place of delivery at first destination, will be allowed without charge if order is received in time to permit instructions to be given to yard employees prior to arrival of car at first destination or at the terminal yard serving such destination.
  - (b) If such orders are received in time to permit instructions to be given to yard employees within 24 hours after arrival of car at terminal yard a charge of \$2 per car will be made.
  - (c) If such orders are received subsequent to 24 hours after arrival of car at terminal yard a charge of \$5 per car will be made.

9. Proposed application of charges for reconsignment regardless of the method of freight rate construction justified.

10. Proposed regulation prohibiting reconsignment to an embargoed point justified in part.

With respect to certain provisions not included in the general rules; *Held*: Increased charges for diversion and reconsignment proposed by certain New England carriers not justified.

Charges proposed by some respondents for transferring the contents of certain reconsigned cars not justified.

Charges proposed for diversion or reconsignment of grain and certain other commodities at Pittsburgh, Pa., and other points not found to be unreasonable in so far as they do not exceed the charges proposed in the general rules herein approved, but not approved because unjust discrimination would result from their application.

*M. B. Pierce, E. S. Ballard, J. M. Sternhagen, George R. Allen, James Stillwell, R. H. Widdicombe, W. A. Northcutt, William Burger, F. B. Houghton, J. B. Coffey, W. N. King, Fred C. Wright, Wallace T. Hughes, J. D. Watson, W. G. Wagner, H. C. Burnett, A. P. Humburg, Kenneth F. Burgess, C. S. Burg, T. J. Norton, Frank S. Davis, and D. P. Connell* for various respondents.

*W. H. Chandler* for Boston Chamber of Commerce; *John S. Burchmore* and *Luther M. Walter* for Chicago Coal Merchants' Association and Chicago Coal & Coke Exchange; *J. P. Haynes* for Cairo Board of Trade; *D. F. Hurd* for Cleveland Chamber of Commerce; *H. C. Barlow* for Chicago Association of Commerce; *J. S. Brown* for Board of Trade of the City of Chicago; *G. B. Webster* for Associated Cooperage Industries of America; *F. J. Danner* for Davenport Commercial Club; *A. C. Slaughter* for Lagomarcino-Grupe Company; *Howard Streeter* for Detroit Coal Exchange; *W. B. Martin* for Dubuque Shippers' Association; *C. A. Eastman* for Eastman-Barber Company; *William R. Bach* for Illinois Grain Dealers' Association; *R. R. Hargis* for Indianapolis Board of Trade; *B. L. Glover* for Iola Cement Mills Traffic Association; *W. F. Parsons* for Railroad Commissioners of Iowa; *J. H. Scott* for Iowa shippers; *A. E. Helm* and *H. O. Caster* for Public Utilities Commission of Kansas; *S. J. Bolton* for La Crosse Chamber of Commerce; and *E. S. Gubernator, L. J. Dauback, and F. E. Paulson* for Lehigh Portland Cement Company.

*E. H. Groseclose* for Meinrath Brokerage Company; *Charles W. Nash* and *Lester T. Hubbard* for W. G. Morton Coal Company, Marquette Coal Company, Saxton Coal Company, H. W. Sommers, C. M. Stuart Coal Company, J. J. Child Company, Judson Coal Company, and others; *G. M. Freer* for National Industrial Traffic League, Ohio Shippers' Association, Cincinnati Chamber of Commerce, and wholesale yellow-pine interests; *Charles J. Austin* for New York Produce Exchange; *F. M. Ducker* for Northern Hemlock & Hardwood Asso-

ciation; *A. E. Solie* for Northern Wholesale Hardwood Lumbermen's Association and Central Wisconsin Traffic Association; *Stanley B. Houck* for Northern Traffic & Service Bureau; and *P. P. Murray* for Traffic Bureau of Omaha Commercial Club.

*Allen S. Olmsted, 2d*, *E. B. Richards*, *T. R. White*, and *William A. Glasgow, jr.*, for Commercial Exchange of Philadelphia; *John B. Daish* and *C. G. Burson* for Pittsburgh Grain & Hay Exchange; *H. P. McCue* for Pittsburgh Coal Company; *J. D. A. Morrow* for Pittsburgh Coal Producers' Association; *C. E. Childe* for Traffic Bureau of the Sioux City Commercial Club; and *Oliver E. Sweet*, *D. L. Kelley*, and *L. R. Bitney* for Railroad Commissioners of South Dakota.

*R. D. Rynder* for Swift & Company; *Carl A. Orlob* for Utah-Idaho Sugar Company; *S. H. Love* for Utah-Idaho Sugar Company, Amalgamated Sugar Company, and Layton Sugar Company; *Stuart MacKibben* and *Harry Aldworth* for Fullerton-Powell Hardwood Lumber Company and others; *G. Frank Morris* for Foster Lumber Company; *Charles Rippin* for Merchants' Exchange of St. Louis; *C. B. Stafford* for Louisville Board of Trade and Louisville Coal Club; *Claude W. Owen* for Committee of Wholesale Lumber Dealers; and *E. E. Ebert* for Newark Lumber Trade Association, New Jersey Retailers' Association, Metropolitan Yellow Pine Association, Trexler Lumber Company, and Eastern States Lumber Dealers' Association.

*Frank E. Williamson* for Buffalo Lumber Exchange; *Wm. S. Phippen* for National Lumber Dealers' Association; *A. G. T. Moore* and *R. M. Hallowell* for Southern Pine Association; *John J. Tully* for Woodstock Lumber Company, Massachusetts Wholesale Lumber Dealers' Association, and Jones Hardware Company; *O. L. Bunn* for Birmingham Traffic Association and Alabama Coal Operators' Association; *Hugh B. Rowland* for Consolidation Coal Company; *T. A. McGrath* for Minneapolis wholesale coal dealers; *R. D. Reeves* for W. G. Coyle & Company, Incorporated, and R. P. Hyams Coal Company; *J. E. Bryan* for Western Traffic Association; and *George A. Schroeder* for Milwaukee Chamber of Commerce.

*I. W. Preetorius* for National Scrap Iron & Steel Association; *R. D. Sangster* for Kansas City Chamber of Commerce, Kansas City Board of Trade, and Kansas City Hay Dealers' Association; *L. E. Banta* for Indianapolis Board of Trade; *B. E. Worley* for Chicago Feed Dealers' Association; *Allan T. West* for St. Joseph Grain Exchange and St. Joseph Hay Exchange; *W. T. Cornelison* for Grain Dealers' National Association, Illinois grain dealers, and Peoria Board of Trade; *E. P. Smith* for Omaha Wholesale Coal Dealers' Association; *Austin P. Braun* for Walrath & Sherwood and

others; *J. A. Rockwell* for Sunderland Brothers Company; *Herbert Sheridan* and *G. Stewart Henderson* for Baltimore Chamber of Commerce; *George P. Wilson* for Philadelphia Chamber of Commerce; *T. Noel Butler* for Wistar, Underhill & Nixon; and *Gardner I. Jones* for Massachusetts Wholesale Lumber Dealers' Association and Jones Hardware Company.

#### REPORT OF THE COMMISSION.

**McCHORD, Commissioner:**

The issues here presented were made the subject of a proposed report by the examiner. Exceptions and briefs were filed and the parties were heard in oral argument.

By tariffs filed to become effective at various dates in March, April, and May, 1917, practically all of the steam roads of the country propose changes in their tariffs, the general effect of which would be to increase the charges for the service of reconsigning carload freight shipments. Numerous protests were filed, representing various interests, but largely those of coal, lumber, and grain, and the effective dates of the tariffs were ordered postponed until January 13, 1918, pending investigation.

The primary purpose of the proposed charges and rules, as stated by the carriers, is to increase car efficiency by reducing the delays incident to reconsignment. Secondly, they are expected to secure a greater measure of compensation for the service and a greater degree of uniformity in rules applicable thereto throughout the country. While the filing of the tariffs was precipitated by the unprecedented car shortage which has prevailed during the past year, the charges and rules proposed are nevertheless intended to be permanent and are not regarded by the carriers as emergency measures.

#### THE SERVICE DESCRIBED.

In previous reports of the Commission the services of diversion or reconsignment have been described in greater or less detail, but it is nevertheless deemed advisable to include a description in this report. In no other case has the subject been dealt with so exhaustively as in this; further, a clear understanding of the services performed is necessary to an understanding of the succeeding discussion of costs. Strictly speaking, a change in the destination of a shipment, made en route, is termed a "diversion"; but for the purposes of this report the term "reconsignment" will be applied to a change in the destination of a shipment either before or after it reaches its originally billed destination.

The amount and character of the carrier service required in effecting a reconsignment vary greatly, depending upon the information



accompanying the shipper's request, the degree of certainty as to the location of the shipment, the means of communication, the accessibility of the car containing the shipment when found, and the amount of detention of the car at the point of reconsignment, necessitated by the shipper's requirements or by operating conditions. Ordinarily the shipper places his request for reconsignment with an authorized agent of the carrier which originated the shipment. The agent receiving the request, if not authorized or prepared to issue the necessary order, transmits the request to the proper official and the order is issued by him. If the car is to be reconsigned from its originally billed destination, or if its location is definitely known, it is necessary only to communicate the order to the agent at that location or destination. If, however, the shipment is to be stopped or diverted before it reaches its original destination, and especially if it be a long distance or interline shipment, it is frequently necessary to communicate with a number of points on the route, or, where the route of the shipment is unknown, to place stop orders at a number of junction points or gateways through which the shipment may move. In many cases the orders fail to reach the shipment before it arrives at its destination or passes off the rails of the initial carrier. In the latter case the attempt may be abandoned or may be taken up anew with the connecting line. An agent receiving an order to stop or reassign a car which is billed to pass his station must watch the train lists and see that the car is intercepted and properly rebilled. If reconsigned to a point beyond and in the original line of shipment, the necessary change may possibly be effected in time to permit the car to continue its journey in the train in which it arrived. In most cases, however, it is necessary to set out the car and to forward it with a later train. The switching service here involved varies widely under different conditions, which it is believed unnecessary to describe. An agent receiving an order to reassign a car which is billed to stop at his station must likewise exercise care to see that the order is promptly executed.

In practice, a great majority of the reconsignments are effected at principal junction points or "hold" points. At Chicago, for example, as an aid in stopping and segregating reconsigned cars, a so-called "reconsignment board" is provided, on which are listed the numbers of cars on which reconsignment orders have been received by the agent. The car list of each arriving train is compared with the board list, and instructions given the yard or train employees as to the reconsigned cars. New numbers are added as orders are received and old numbers erased as the reconsignments are accomplished. A representation of the reconsigning board of the Chicago & North Western at its Proviso yard in Chicago, filed as an exhibit, shows the numbers

of 731 cars. At the larger terminals the trains are broken up and the cars switched to yards and tracks determined with regard to the subsequent movement. If the destination of a reconsigned car is known it is handled much as a direct shipment would be; if not, it is switched to a hold track awaiting disposition. At some terminals, at least, it is the practice to switch all reconsigned cars to the hold tracks, whether the final destinations are known or not. The amount of subsequent service is affected by the period of detention. As cars are ordered forward they must be segregated from others on the same hold track and placed in departing trains. It is the general practice to switch the hold tracks at somewhat regular intervals, usually once a day, and if a number of the cars are to be forwarded it is found most economical to take all of the cars on a hold track to the classification yard, returning such as are not ordered forward. It is, therefore, evident that a car held for several days is subject to several switching services, although not individually. The extent of these switching movements varies greatly at different points. At Altoona, Pa., for example, the distance from the hold tracks to the classification yard is about 2 miles; but this distance should not be accepted as representative.

At the hearing much attention was given to the clerical and accounting services required by reconsignments. For the purpose of showing the clerical labor in the handling of reconsignment orders, the following enumeration was made:

1. Agent receives request to consign.
2. Agent writes message ordering the reconsignment.
3. Message is checked with request.
4. Message is sent to telegraph office.
5. If request was made by telephone, agent receives confirmation by letter.
6. Agent checks written confirmation with the telephone order and files them together.
7. Operator sends reconsignment message.
8. Operator at point of reconsignment receives the message.
9. Message is sent to yard clerk.
10. Yard clerk books the order.
11. Yard clerk examines record of cars previously passing station.
12. If record fails to show that car has already passed, yard clerk next checks record of cars in yard.
13. If car is not in the yard, yard clerk examines record of all trains arriving from direction in which the car originates until it is received.
14. Yard clerk finds waybill and makes necessary changes thereon.
15. Yard clerk makes memorandum against his order record.
16. Yard clerk writes message to agent from whom order was received advising that reconsignment has been effected.
17. Message is sent to telegraph office.
18. Operator sends message.
19. Operator at destination receives message.
20. Message is delivered to agent.
21. Agent checks message with original order.
22. Agent advises party who requested the reconsignment and files all papers.

Various circumstances serve to multiply the number of messages and letters necessary to effect many of the reconsignments. Exhibits were filed by various respondents giving examples, taken from their files at random, or by some process of selection said to be fair,

showing the number and nature of the communications required. In reconsigning 216 cars in November, 1916, the Northern Pacific used 1,063 telegrams, 186 letters, and 186 telephone messages. The files of the traffic officials of the Pennsylvania lines west of Pittsburgh show that in accomplishing 2,936 reconsignments in the week ending April 21, 1917, there were used 2,637 telephone messages, 1,675 telegrams, and 2,586 mail communications. It is said that the list is incomplete. In executing 1,215 reconsigning orders, covering 1,621 cars, the Chicago & North Western, in the week ending April 22, 1917, received or sent 1,944 telegrams, 2,612 letters, and 1,519 telephone messages. Other respondents presented similar data.

A witness for the Louisville & Nashville filed an exhibit showing in chronological order the steps taken in effecting reconsignments at Nashville, Tenn., during the week ending May 4, 1917. The following example appears to be fairly illustrative of the services:

*Shipment of automobiles originally billed from Flint, Mich., to Atlanta, Ga., but diverted to Birmingham, Ala.*

April 27, 1917. The consignee at Atlanta telephoned the division freight agent of the Louisville & Nashville at Atlanta to divert to Birmingham.

April 27, 1917. The division freight agent telegraphed local agents at Evansville, Ind., and Nashville, Tenn., to divert.

April 27, 1917. The division freight agent received the letter confirming the order to divert and inclosing the original bill of lading which he was requested to indorse and return when diversion had been accomplished.

April 27, 1917. The agent at Nashville telephoned the yard office to divert and confirmed the message by letter.

May 2, 1917. The agent at Evansville diverted the car and wired the division freight agent to that effect.

May 3, 1917. The division freight agent wrote the consignor that the shipment had been diverted as requested, and returned bill of lading properly indorsed.

Following is a case in which the attempt to reassign was unsuccessful. It is apparent that the routing of the shipment was not known.

*Shipment of lumber originally billed from Tuscaloosa, Ala., to Mounds, Ill., but ordered reconsigned to Akron, Ohio.*

May 3, 1917. The original consignee, a St. Louis, Mo., lumber company, wrote the general freight agent of the Louisville & Nashville at Louisville, Ky., asking that the car be diverted if it moved over the L. & N., and sent a copy of the letter to the general agent of the L. & N. at St. Louis.

May 4, 1917. The general agent of the L. & N. at St. Louis wired the general agent at Nashville to reassign.

- May 4, 1917. The general agent at Nashville telephoned the Nashville yard office at 3.15 p. m., but found no record of the car. He telephoned again at 4.35 p. m., with like result.
- May 4, 1917. The general agent at Nashville wired the general agent at St. Louis, 4.35 p. m., that the car had not passed Nashville, but that he would intercept and re consign it.
- May 5, 1917. The general agent at St. Louis wrote the general agent at Louisville, referring to the letter from the lumber company and advising that he had wired Nashville to re consign. Copy of this letter was sent to the general agent at Nashville.
- May 5, 1917. The general freight agent at St. Louis received the letter from the lumber company, dated May 3, and referred it to the freight claim agent.
- May 7, 1917. The freight claim agent ascertained from the car accountant that the car had been delivered to the Illinois Central at Birmingham, Ala., on April 27.
- May 7, 1917. The freight claim agent wrote the lumber company accordingly.
- May 7, 1917. The general freight agent received the letter from the general agent at St. Louis, dated May 5, and referred it to the freight claim agent.
- May 8, 1917. The general agent at Nashville wrote the yardmaster at Nashville, sending a copy of the letter to the general agent at St. Louis.
- May 24, 1917. The freight claim agent wrote the general agent at St. Louis that the car had been delivered to the Illinois Central at Birmingham on April 27.
- June 1, 1917. The general agent at Nashville wrote the general agent at St. Louis that the car had not passed Nashville.
- June 2, 1917. The general agent at St. Louis wrote the general agent at Nashville to close his file.

A change in the destination of a shipment after it has left the point of origin and after the waybill has been taken into the accounts of the billing station and the general office requires additional service in those offices. The nature and extent of these services is indicated by the following instructions to agents, issued by the New York Central Railroad Company:

When freight is diverted from the waybilled destination, on the published authority of the freight traffic department, and the waybill is in the current month, the destination of the waybill must be corrected and the waybill forwarded to the corrected destination for reporting to this office.

Agent at the station to which the shipment was originally waybilled must issue a correction notice to cover the corrected destination of the waybill, sending the original correction notice and copy, with the waybill, to the agent at the corrected destination, or to the receiving agent at the junction station if the freight is diverted to a point on a foreign road. Copies of the correction notice must be sent to the assistant auditor of freight accounts and to the forwarding agent.

Agent at the station to which the shipment was originally waybilled must also issue a local waybill to cover the charges for the diversion, and any additional service authorized by the freight traffic department. The charge for the diversion must be shown on the waybill as advanced charges and re-

ported as miscellaneous freight earnings, and the charge for additional service must be waybilled as freight charges. Reference to the local waybill covering charges for the diversion and additional service must be noted on the original waybill and correction notice, and the receiving agent at the corrected destination must see that the correction notice and waybill for additional charges are received by him, and he must issue an additional correction notice to cover any necessary change in rate and divisions on account of change in destination.

Agent at the station where the diversion is made must correct the running slip, and if the waybill is with the car he, instead of the agent at the station to which the shipment was originally waybilled, must issue the correction notice to cover the corrected destination of the waybill and follow instructions of rules above.

When freight covered by an interline waybill for junction settlement reading to a station on a foreign road is diverted to a station on our road, the receiving agent at the corrected destination in taking the waybill into account must report as freight charges this company's proportion and the charges of the foreign road beyond, and issue a correction notice to cover the charges to the corrected destination.

Copies of all corrections must be sent to the assistant auditor of freight accounts, attached to a memorandum reading "corrections on billing covering diverted freight."

When a diversion is made in a month subsequent to the date of the waybill or when a waybill covers two or more shipments, one of which is diverted, agents must refer to this office for instructions.

When coal and coke shipments are diverted from the waybilled destination agents must hold the waybills until they receive authority from the auditor of freight accounts to correct and forward same to the corrected destination.

When a shipment is diverted and the waybill has been sent to this office the receiving agent must wire for the return of waybill, state new destination, and the route when to a point on a foreign road. The waybill will be returned to the agent, who must complete the adjustment in accordance with instructions in circular 76 under "correction of waybills covering freight diverted in transit." The waybill will be eliminated by this office from the receiving agent's report.

The practices of different roads vary somewhat, but the accounting and clerical service in the aggregate is substantially similar. When the waybills are required to be sent to the general office as soon as the shipment goes forward and there entered in the accounts, subsequent changes in the routes or destination necessitate corresponding changes in the records, frequently involving also changes in the freight charges and a readjustment of divisions on interline shipments.

The description thus far applies to the services heretofore commonly designated and understood by the term "reconsignment." It would be improper, however, to leave this subject without special reference to a great class of reconsignments designated in the proposed rules as "reconsignments within switching limits." This is a broadening of the term "reconsignment" to include terminal services which have heretofore been designated by the term "placement,"



usually performed under instructions from shippers known as "disposition" orders instead of reconsignment orders. Certain commodities, particularly coal, are billed in great volume to the cities where they are to be consumed, and consigned to the shipper without designation of the ultimate consignee or place of unloading. The cars are held in the outer yards of the carrier and the consignee shown on billing is notified, usually by telephone, of the arrival of his shipments. Upon receipt of advice as to the party who is to receive the freight and the place for unloading, the cars are moved to their final point of delivery. In this case the ease of communication between shipper and carrier and the relatively short distances tend greatly to reduce the services as compared with those of an ordinary reconsignment between terminals.

Another class of reconsignments to be differentiated from others as to service consists of those regularly performed at hold points, which in some cases are recognized as such merely by usage and in others are designated in tariffs. In *Commercial Exchange of Philadelphia v. R. R. Co.*, 38 I. C. C., 551, some of the principal hold points in eastern trunk line territory were named and their origin and use described. The billing of shipments originally to the points from which they are to be reconsigned obviates any difficulty in intercepting the shipments en route. More concerning this practice will appear later.

Detention of cars incident to reconsignment was stressed by the respondents as the principal justification of the proposed tariffs. They testified that more or less detention is inherent in the service; that reconsignment takes a car out of the "current of traffic," which not only delays the reconsigned car but all others with which it is associated in movement. Among the specific allegations of detention are the following: At Hornell, N. Y., the principal hold point of the Erie, in December, 1916, and January and February, 1917, 266 reconsigned cars were detained an average of 2.1 days each. At Lyons, N. Y., 1,103 cars were reconsigned by the New York Central during September, 1916, of which 611 were ordered reconsigned before and 377 after arrival. The average detention of the latter was 1.71 days. At the same point, during November, 1916, 390 cars ordered reconsigned after arrival were detained an average of 2.33 days. At Altoona, Pa., during March, 1917, 713 cars were reconsigned by the Pennsylvania, on 205 of which orders were received after arrival and the average detention of the latter was 3.25 days. During April, 1917, the similar detention at the same point was 2.2 days. At Renovo, Pa., during March, 1917, 29 cars reconsigned by the same carrier after arrival were detained 4.7 days each. An exhibit covering about 10,000 reconsign-



ments on the Illinois Central during February, 1917, shows an average detention of about 2 days. The Union Pacific estimates the average detention chargeable to the shipper to be 1.75 days. In order to compare the detention of reconsigned cars with that of cars billed through, the records of 10 trains, aggregating 393 cars, which passed Hornell in December, 1916, were examined. These trains contained 12 cars stopped at Hornell for reconsignment. On 5 cars orders were received before arrival, and their average detention was 60 hours and 25 minutes. The remaining 7 cars were ordered reconsigned after arrival and their average detention was 104 hours and 29 minutes. The cars billed through Hornell were delayed an average of about 10 hours and 18 minutes. A test by the Missouri Pacific at Coffeyville, Kans., a division point, showed that 25 cars handled through without reconsignment on different days in October, 1916, required an average of 16 hours and 20 minutes each, while 25 cars reconsigned at that point were delayed a total of 137 days. Exhibits filed by the Baltimore & Ohio, covering reconsignments at various points and under various conditions, show delays ranging from 1.94 to 4.90 days. Other examples are in evidence. It is alleged in each case that the delays shown are caused by the reconsigning service, the time, in most cases, being computed from the arrival of the car to the receipt of the forwarding instructions from the shipper, and that the delays would not have occurred if the shipments had been billed through without reconsignment.

#### COST OF THE SERVICE.

In a number of cases involving reconsignment we have ruled that the carriers were entitled to charge the actual cost and a reasonable profit for the service. By "cost" as used above is meant operating cost, and by "profit" a return upon investment in the proportion that it is devoted to the service. In *Commercial Exchange of Philadelphia v. R. R. Co.*, *supra*, the carriers submitted estimates of cost, concerning which we said:

Complainant insists that the evidence of the cost of the service is insufficient to serve as the basis for a finding in this respect. The record suggests that the carriers have not used the effort to ascertain the cost of the service that would be justified by the importance and value of this information. The time has arrived when the carriers can not afford to treat with indifference the cost of the services which they perform.

Responding to this view, the carriers in this proceeding have given greater attention to the subject of cost. Numerous exhibits were filed, embodying various methods and showing different results. For the most part they pertain to reconsignments at the principal hold or reconsigning points of the carriers. Witnesses for the Erie Railroad

undertook to show the approximate cost of effecting reconsignments at Hornell, N. Y. Their estimate of the cost of reconsigning a shipment as to which orders are in hand before its arrival at Hornell is \$5.95, made up as follows:

1. Yard and station clerical expense at diverting station.....	\$0. 81
2. Clerical expense in office of auditor of freight accounts.....	. 10
3. Clerical expense in other offices .....	. 10
4. Cost of telegrams, based upon the average for 50 cars reconsigned in March, 1917.....	. 47
5. Switching .....	2. 89
	<hr/>
	3. 37
6. Delay to car (one day): 30 per cent of \$3.79.....	1. 14
7. Profit on service covered by items 1 to 5, based on operating ratio of 70 per cent: 42.9 per cent of \$3.37.....	1. 44
	<hr/>
Total .....	5. 95

This estimate contemplates the switching of the car to and from the hold track. In the practice of this road the waybill does not ordinarily accompany the car, and the holding of the car on track in this case is apparently for the principal purpose of insuring proper correction of billing. The division superintendent testified that if the waybill were at the station, so that it could be corrected upon arrival of the car, the additional switching would not be justified. The estimate of \$2.89 for switching is based upon an experiment with a single car and included the service of the engine and crew to the hold track, the haul of a string of about 35 cars from the hold track to the classification yard, the segregation of the twenty-third car in line, its attachment to an outgoing train, and the return of the remaining cars to the hold track. The amount includes \$1.47 for engine service, 77 cents for train crew, and 15 cents for switch tenders. The estimate of 51 cents for clerical service is not fully explained. The item of 47 cents for telegrams is arrived at by using commercial rates when Western Union wires were used and 60 per cent of commercial rates when company wires were used. The item of \$1.14 for delay is based upon the average gross revenue per car per day of all cars in revenue service on the Erie during 1916 and assumes that 30 per cent of the revenue is profit, the operating ratio being about 70 per cent. The item of \$1.44 is added upon the theory that the carrier is entitled to its average profit upon the cost of the services included under the first five items of expense; and it is assumed that if the forces and facilities were not engaged in performing these services they would be employed in performing other services that would yield the normal profit. It may be said that if \$4.97 of the expense shown is due to the absence

of the waybill the carrier should carefully consider a remedy. Witnesses for other trunk lines make no claim of delay on cars ordered reconsigned before reaching the hold points. It is understood that most of the shipments reconsigned at Hornell are grain or grain products billed to that station for reconsignment. It is urged by protestants, with reason, that the switching of a single car is not a satisfactory test of expense, as it may fairly be presumed that frequently more than one car is forwarded at the same time and that a separate switching movement for each car between the hold track and classification yard is not required.

The above statement of expense would be equally applicable to reconsignments where orders are received at Hornell after the arrival of the shipments, with proper additions for detentions beyond one day, and deduction of any demurrage charges collected.

Where a car is stopped short of its billed destination and is subsequently ordered forward, the cost, based upon the reconsignment of 20 cars in March, 1917, selected at random, is computed by the Erie at \$12.38, as follows:

1. Yard and station clerical service at diverting station.....	\$0. 67
2. Clerical service in office of auditor of freight accounts:	
Diverslon clerks.....	\$0. 84
Corrections, etc.....	. 10
	<u>          . 44</u>
3. Clerical service in office of general freight agent.....	. 10
4. Clerical service in office of superintendent of transportation.....	. 10
5. Telegrams in office of auditor of freight accounts (60 per cent of commercial rates).....	1. 08
6. Telegrams in office of superintendent of transportation (60 per cent of commercial rates).....	3. 49
7. Switching .....	<u>2. 39</u>
	8. 22
8. Delay to car (two days):	
30 per cent of \$7.58.....	\$2. 27
Less average demurrage.....	1. 64
	<u>          . 63</u>
9. Profit on service covered by items 1 to 7 based on operating ratio of 70 per cent: 42.9 per cent of \$8.22.....	<u>3. 53</u>
Total.....	12. 38

As in the previous statement, the items of clerical expense are not sufficiently analyzed in the record, but the detailed description of the work required is sufficient to give color to the estimates. The item of 34 cents for diversion clerks is determined by dividing the monthly salaries of the clerks employed—\$157.50—by the average number of reconsignments handled monthly during the six months ended March 31, 1917, which was 461. It must, of course, be borne in mind that the traffic conditions in the east in the months of March and April,

1917, were bad, from which it may be presumed that the expense of telegraphing shown in this statement is not representative of normal conditions.

A third statement submitted by the Erie purports to give the approximate cost of reconsignments within switching limits:

1. Clerical service at station.....	\$0. 10
2. Switching .....	2. 00
	<hr/>
	2. 10
3. Delay to car (one day), 90 per cent of \$3.79.....	1. 14
	<hr/>
	3. 24
4. Additional delay of one day if orders are not received within 24 hours..	1. 14
	<hr/>
	4. 38
5. Profit on services covered by items 1 and 2, based on operating ratio of 70 per cent, 42.9 per cent of \$2.10.....	. 90
	<hr/>
	5. 28

The estimated expense in this case is that attributed to the extra service required at Paterson, N. J., in delivering shipments the billing for which does not show the place of final delivery in the city. The items for clerical expense and switching are merely estimates and are not based upon computation. The remaining items are similar to those in preceding statements and do not require comment.

It was pointed out that these statements include nothing for maintenance of way or for certain other minor items of expense, as to which no estimate was submitted.

Based upon the reconsignment of 20 cars at Lyons in November, 1916, the witness for the New York Central testified that the approximate cost of reconsigning cars on advance orders was 69 cents, and on orders received later, \$10.70, the latter including per diem and loss of earnings, but excluding switching.

An apparently careful analysis of cost at the Altoona yard of the Pennsylvania shows that the average cost per car of moving cars from the hold yards to the receiving yard and return to the hold yard or classification yard is 62.3 cents. A witness for that company testified that the average cost of reconsigning cars at Altoona, based upon detention of 2.2 days, is \$9.73, made up as follows:

Switching, 2.2 movements at 62.3 cents.....	\$1. 37
Loss of earnings, \$4.14 per day, less demurrage for 1.2 days at \$2 per day..	6. 71
Per diem, 2.2 days at 75 cents per day .....	1. 65
	<hr/>
Total.....	9. 73

Earnings per car per day are arrived at by multiplying the average earnings per mile of loaded cars on the Pennsylvania Railroad, 17.6 cents, by the average daily mileage, 23½.

The supervisor of transportation of the Baltimore & Ohio presented estimates of the cost of reconsigning cars under various conditions, some before reaching destination and others after arrival at Pittsburgh, Pa., Cleveland, Ohio, and Evitts Creek, Md., based usually upon records of 20 cars handled in March, April, and May, 1917. The following is an example, omitting the detail as to separate cars and quoting only the summary:

*Cost of reconsigning cars billed to Pittsburgh and reconsigned by division freight agent after arrival.*

4.15 days' delay at \$2.60-----	\$10. 79
Clerical service in assistant general freight agent's office, Pittsburgh--	. 18
Per diem on 16 foreign cars at 75 cents per day, spread over 20 cars----	2. 62
Switching (wages and fuel only)-----	1. 06
Telegrams (53 at 25 cents, spread over 20 cars)-----	. 70
Letters (40 at 5 cents each, spread over 20 cars)-----	. 10
Clerical service, office of auditor-----	. 22
Clerical service, auditor of freight claims-----	. 15
Total -----	15. 82

In all of the statements, nine in number, the principal item of expense is for delay, at \$2.60 per day, which is the average gross revenue per car of all revenue cars on the road for March, 1917. The delay includes time for moving the cars after receipt of the forwarding orders. The items for clerical services were estimated by the heads of the respective offices. The estimate of 25 cents for telegrams was furnished by the superintendent of telegraph, and includes all service from the dictation of the message to its delivery at destination. While most of the items appear reasonable, it is obviously erroneous to assume that the loss through delay is properly represented by the gross earnings per car, without allowance for the expense that would necessarily be incurred in realizing the earnings; nor can it be assumed that the failure to move tonnage on a certain day ordinarily results in its total permanent loss to the carrier. It is further to be considered that loss of earnings would be reduced by demurrage collected on the cars delayed more than 24 hours for shipper's benefit. Under current demurrage tariffs 24 hours' free time is allowed on cars held for reconsignment, computed from the first 7 a. m. after the day on which notice of arrival is given or sent to the consignee. For the five succeeding days the charge is \$2 per day and for further detention \$5 per day. Since the exhibit was prepared the rate of per diem has been reduced from 75 cents to 60 cents, dating from April 1. The remaining exhibits submitted by this witness were similarly prepared, and show costs ranging from \$8.16 to \$20.19, the

latter being for reconsignments at Cleveland in September, 1916, on which the average delay is shown as 7.36 days.

A witness for the Pennsylvania lines west of Pittsburgh submitted exhibits purporting to show the approximate direct cost of reconsigning cars at Pittsburgh, Allegheny, Cincinnati, and Toledo, of which the following is a summary:

	Pitts- burgh (produce yard).	Alle- gheny (hay and grain yard).	Cincin- nati.	Toledo.	Total
Average number of cars handled per month.....	4,379	975	23,706	14,861	43,921
Average number of cars reconsigned per month.....	382	975	452	272	2,081
Per cent of reconsigned cars of total.....	8.7	100	2.0	2.0	4.7
Average number reconsigned per day.....	13	32	15	9	69
Items of direct cost (per month):					
1. Yardmasters and clerks.....	\$225.00	\$103.30	\$144.60	\$147.41	\$620.31
2. Yard conductors and brakemen.....	218.66	1,156.25	837.90	200.32	2,413.13
3. Yard switch and signal tenders.....		52.00	69.60		121.60
4. Yard engineers and firemen.....	169.56	817.75	271.20	120.91	1,319.42
5. Enginehouse expense, yard.....	22.81	150.00	12.00	38.13	222.94
6. Fuel, water, lubricants, and other expenses....	67.33	470.50	66.00	142.13	745.96
7. Locomotive repairs.....	129.76	860.50	183.60	149.07	1,322.93
8. Property (ground) at rental value plus im- provements.....	1,421.36	675.00	283.80	23.17	2,403.33
9. Maintenance of tracks.....	28.77	96.67	62.50	15.83	203.77
Total direct costs due to reconsignments....	2,223.25	4,381.97	1,931.20	836.97	9,373.39
Average cost per car.....	5.82	4.49	4.27	3.07	4.50
Add cost from and to classification yard.....	.75	.15	0.00	0.00	.21
Total cost per car.....	6.57	4.64	4.27	3.07	4.71
Add 2 days' per diem equivalent.....	1.50	1.50	1.50	1.50	1.80
Grand total cost per car.....	8.07	6.14	5.77	4.57	6.21

It will be noted that these estimates contain an item of \$1.50 representing delay, which is based upon per diem at 75 cents per day for two days. The actual detention at the four yards is said to be from two to three and one-half days. Some of the items of expense are apportionments, as to which the witness was unable to give details. The items of rent are based upon a return of 6 per cent upon the cost of the property used, including improvements. The estimates contain no allowance for clerical service, telegrams, or overhead expenses. It is not clearly shown that the expenses at Pittsburgh, Cincinnati, or Toledo are exclusively attributable to reconsignment. It is insisted, however, that the entire expense at the Allegheny hay and grain yard is due to reconsignment and would be avoided if shipments were billed direct.

The general superintendent of transportation of the Illinois Central filed the following statement of reconsignments at points on that company's line during February, 1917, with the estimated cost.



Station.	Cars reconsigned.			Reconsigning instructions received.		Average delay (days).	Expense per car.					
	Coal.	Miscellaneous.	Total.	Before arrival.	After arrival.		Per diem.	Yard engines.	Clerical.	Telegraph and telephone.	Interest and maintenance track.	Total.
Chicago, Ill.....	1,260	2,100	3,360	7	87	2	\$1.50	\$2.28	\$0.21	.....	\$1.14	\$5.13
27	17	44	7	87	3	3	2.25	2.10	.25	\$2.65	.15	7.43
36	47	83	78	1	5	1	.75	5.25	.33	2.65	.15	9.23
778	1,381	2,060	845	1,314	1	1	.75	1.60	.15	.....	.08	2.20
2	1,604	1,006	413	1,103	2	2	1.50	2.68	.26	2.65	.15	7.24
18	1	17	15	2	1	1	.75	2.50	.44	2.65	.15	6.70
65	2	67	67	.....	1	1	.75	2.63	.79	2.65	.19	7.03
9	2	11	11	.....	1	1	.75	2.45	.27	2.65	.23	6.90
118	1	119	106	13	1	1	.75	.27	.15	2.65	.09	3.20
29	.....	29	29	.....	1	1	.75	2.65	.60	2.65	.23	7.28
65	.....	65	63	12	2	2	1.50	.53	.60	2.65	.26	5.34
2	0	11	2	0	1	1	.75	1.81	.55	2.65	.54	6.23
10	.....	16	7	0	1	1	.75	1.84	.57	2.65	.43	6.24
78	63	143	15	120	2	2	1.50	1.70	.37	2.65	.22	6.20
660	472	1,131	111	1,620	1	1	.75	.57	.13	2.65	.04	4.13
40	0	46	19	27	1	1	.75	.55	.05	2.65	.40	4.44
.....	4	4	1	3	2	2	1.50	.10	.10	2.65	1.30	5.05
.....	2	2	.....	2	2	2	3.00	.80	.37	2.65	2.00	8.20
15	26	40	.....	40	2	2	2.75	4.01	.42	2.68	.48	11.31
10	18	34	2	22	4	4	3.00	10.70	2.04	.....	2.79	19.53
743	215	968	403	565	3	3	2.75	1.36	.36	.....	.17	4.24
1	4	5	.....	5	4	4	3.00	1.07	.20	2.85	.76	7.08

These figures were prepared by agents at the various points in response to a circular request, and the witness was unable to give further information. The figure first submitted as representing interest and maintenance at Chicago was \$3.66, but upon review it was reduced to \$1.14, as shown. The item of \$2.65 for telegraph expense is an average arrived at by applying half commercial rates on telegrams used in effecting 12 reconsignments assumed to be representative. At certain points the telephone is used and no expense is shown. The engine expense is based upon a computation of \$5.349 per hour, which agrees substantially with the estimates of other witnesses as to the cost of operation of switch engines.

Estimates of cost were submitted by other respondents, but those already discussed are sufficiently representative. One further item may be specifically dealt with as illustrative of a method of arriving at cost of clerical labor. Transportation witnesses for the New York Central lines used in their statements of cost an item of 25 cents per car, representing clerical expense in the office of the freight auditor. A witness from that office presented an analysis of this cost, based upon the month of November, 1916, which indicates that about \$1,225 was expended in the New York office and in the Cleveland clearing house in effecting 4,813 reconsignments, an average of 25.4 cents. The items are as follows:

**Freight auditor's office:**

Accounts department (37 days at \$65 per month)-----	\$80.16
Miscellaneous department (8 days at \$75 per month)-----	20.00
Interline billing department—	
Drawing earnings sheets (6 days at \$65 per month)-----	13.00
Correspondence (3 days at \$80 per month)-----	8.00
Applying corrections (5 days at \$65 per month)-----	10.83
Agents' reports (5 days at \$60 per month)-----	10.00
Revision department—	
Correspondence (24 days at \$112 per month)-----	89.60
Changing reports (20 days at \$65 per month)-----	43.33
Stenographic work (36 days at \$60 per month)-----	72.00
Applying corrections (32 days at \$60 per month)-----	64.00
Drawing statements of cars diverted (62 days at \$60)-----	124.00
Total, freight auditor's office-----	<u>534.92</u>

**Cleveland clearing house:**

Accounts department (93½ days at \$65 per month)-----	234.00
Revision, corresponding, and rating departments (29½ days at \$110 per month)-----	126.00
Agents' adjustments (15 days at \$100 per month)-----	50.00
Correction of accounts (153 days at \$55 per month)-----	280.00
Total, Cleveland clearing house-----	<u>690.00</u>
Total, both offices-----	<u>1,224.92</u>

Some criticism has been made of the foregoing evidence of cost, and if consideration of all the questions before us permitted more extended comment, further criticism would be required. The figures can not be taken as an accurate analysis. But they throw some light upon the cost of reconsignment, and are to be commended as an effort upon the part of the carriers to study the expense involved in the performance of special service.

**THE PRESENT TARIFFS.**

The effective reconsigning regulations of different lines throughout the country vary so greatly that a comprehensive statement of their nature is impracticable. Reference to the principal rules of a few representative lines in each section of the country will serve the present purpose, which is to afford a basis for comparison with the rules proposed. In most cases, if not in all, the carriers have basic rules for general application, but those rules are so affected by conditions and by exceptions in recognition of commodity or locality interests that the citation in full of the rules of any carrier would unduly extend the report and would not be materially helpful. In this discussion the term "reconsignment charge" will be understood to mean a charge in addition to the freight rate.

## THE NEW ENGLAND LINES.

The Boston & Maine has a general reconsignment tariff providing a charge of \$3 for diversion before reaching destination, and the application of one-half local rates, minimum \$6 per car, from original destination on shipments reconsigned after reaching that destination. It has also an arrangement for the holding of shipments and their subsequent reconsignment at any point on its line at a charge of \$2 per car. In practice, however, the diversions are accomplished largely at gateways, where facilities have been provided. In order that this tariff may apply the billing must show that the shipment is to be diverted.

The Boston & Albany has in effect a general reconsigning tariff providing a charge of \$2 per car for diversion before arrival at destination, and the application of one-half class rate, minimum \$5 per car, from original destination on shipments reconsigned after arrival. This road has also a tariff providing for the holding of shipments for reconsignment at Rensselaer, N. Y., its western terminus and junction with the New York Central. Shipments are billed to Hinsdale, Mass., with instructions to hold at Rensselaer, and a charge of \$2 per car is made for the reconsignment. All commodities are included within this provision excepting perishable freight, live stock, coal, and coke. Special rules for coal and coke provide more favorable treatment for those commodities, especially in connection with changes of consignee and point of delivery at destination. If request for change is made before the arrival of the shipment or within 48 hours after arrival, if car has not been placed for unloading, the shipment may be reconsigned to a different consignee or to another point of delivery within yard limits without charge. If these conditions are not met the charge is \$2 per car. Provision is also made for the forwarding of coal and coke to another station at a charge of \$2 in addition to freight charges, which vary under different conditions.

The New York, New Haven & Hartford and the Central New England, like the Boston & Albany, have both general and hold tariffs, their provisions being similar to those of the latter road. The hold points are Harlem River, N. Y., on the New Haven, and Maybrook and Beacon, N. Y., on the Central New England. Under the general tariffs the charge for diversion is \$2, and on shipments reconsigned after reaching destination one-half the tariff rate from reconsigning point to the new destination, minimum 2½ cents per 100 pounds, is applied.

The Grand Trunk uses Montreal as a hold point for New England traffic, with special rates for the reconsignment of lumber and forest products, grain and grain products, hay and straw. The Central

Vermont has similar provisions, using St. Albans, Montpelier, and Brattleboro as its recognized hold points.

#### THE TRUNK LINES.

As a general statement it may be said that the tariffs of the trunk lines provide a charge of \$2 for reconsigning shipments before reaching original destination and \$5 for reconsigning after reaching that destination. Some of them specify that the charge of \$2 will apply also when the car is ordered forward before being placed for unloading at original destination.

The principal distinguishing feature of the present trunk line tariffs, as of the tariffs of the New England lines, is the general recognition of hold points and the application of special rates at such points. Some of the principal hold points on the trunk lines are Lyons, N. Y., on the New York Central; Sayre, Pa., on the Lehigh Valley; Altoona and Renovo, Pa., on the Pennsylvania; Hornell, N. Y., on the Erie; Oneonta, N. Y., on the Delaware & Hudson; and Evitts Creek, Md., on the Baltimore & Ohio. At some of these points the special charge for reconsignment is applicable to only a few commodities, notably grain and grain products, hay and straw; while at others a much wider range is permitted. In *Commercial Exchange of Philadelphia v. R. R. Co.*, *supra*, we sustained a charge of \$2 per car for reconsignments at trunk line hold points after arrival of the shipments, and prescribed a maximum charge of \$1 per car for diversion ordered before arrival for commodities directly involved in that proceeding. These charges are now in effect.

The trunk lines also publish special provisions for the reconsignment of coal and coke, generally providing that no charge will be made for diversion en route to destination, but imposing a charge of \$2 per car for reconsignment at destination to a point either within or beyond the switching limits. The New York Central provides that no charge will be made if the request for reconsignment is received before the arrival of the shipment, although it may not be possible to effect the diversion before arrival. Another provision of this company is for the reconsignment of coal from place to place within yard limits at a charge of \$3.

#### CENTRAL FREIGHT ASSOCIATION LINES.

The general rules of the Pennsylvania lines west of Pittsburgh provide a charge of \$2 for reconsignment en route or at destination, in the latter case if the request for reconsignment is received before the car has been placed for unloading. If request is received later the charge is \$5. Exceptions are made in favor of lumber and articles taking lumber rates, which are reconsigned without charge prior to

the arrival at destination. For reconsignment at destination before placement for unloading the charge is \$2, and after such placement, \$3. Grain, generally speaking, is reconsigned from track without extra charge, under special provisions for application at various points on the line. The charge for reconsignment of coal, coke, and iron ore en route is \$2 per car and the same charge is applied at destination before shipments are placed for unloading. For reconsignment to points beyond switching limits after placement the charge is \$5 per car, and for reconsignment to points within switching limits the local switching charge is applied. No extra charge is made for a change in consignee which does not require additional switching.

The general rules of the New York Central lines west of Buffalo and of the Cleveland, Cincinnati, Chicago & St. Louis are substantially the same as those of the Pennsylvania, above described, but numerous exceptions are made affecting reconsignments at Chicago, Detroit, Louisville, and other points, and in favor of grain, coal, and other commodities. The Wabash Railroad has no general reconsigning rules in effect, but publishes provisions for the reconsignment of apples at the through rate, with the addition of 1½ cents per 100 pounds, minimum \$5 per car; also for the reconsignment of grain at Chicago.

#### LINES IN SOUTHERN CLASSIFICATION TERRITORY.

The present practices of the southern lines are more diverse than those of the trunk line or New England carriers. The Southern Railway Company imposes a charge of \$5 for reconsigning commodities in general, either before or after reaching billed destination, with exceptions in favor of fresh fruits and vegetables, fresh meats, and other perishable commodities, on which no charge is made. The general rule of the Atlantic Coast Line does not permit reconsignment except under one or more of five conditions, which are: (1) Insolvency of consignee; (2) refusal by consignee on account of unreasonable delay; (3) refusal growing out of the act of God or the public enemy; (4) bona fide rejection by consignee, not for the purpose of securing reconsignment; (5) physical inability of the carrier to deliver as billed. When any of these conditions exist, reconsignment is made without charge. Exceptions are made in favor of fruits and other perishables, at all points, and pig iron at Pinner's Point, Va., which may be reconsigned in the absence of any of the five conditions. Prior to December 27, 1915, the practice of the Southern Railway was substantially the same as this. The Mobile & Ohio now reconsigns without charge and without imposing the conditions named. The general rule of the Louisville & Nashville is similar to that of the Southern. Exceptions as to coal and coke apply on ship-

ments to New Orleans, Memphis, East St. Louis, and the Ohio River cities and points beyond the Ohio. They provide that when shipments are billed to be held in a terminal yard for reconsignment to a point beyond that served by the yard the charge is \$2. If cars are not so billed and are placed for unloading, the charge for reconsignment either to another delivery point at the same station or beyond is \$3. Delivery of cars so held at terminal yards at points served by the yards is apparently without extra charge. It is also provided that after a car of coal has been placed on a team track for unloading, a change of consignee at the same placement is charged \$2. At New Orleans and Memphis no charge is made for the reconsignment of "hold" cars of coal if orders for reconsignment are received within 24 hours after arrival at the terminal yard. Fresh fruits and vegetables are reconsigned without extra charge.

#### WESTERN LINES.

In general it may be said that the rules of the western lines are more liberal than those of the eastern and southern lines in the matter of permitting reconsignments without charge in addition to the through freight rates. The Chicago & North Western, for example, makes no charge for reconsignment en route and none for reconsignment at destination before placement on unloading tracks. When the order is given after such placement the charge is \$2. No reconsignments are permitted in local switching movements in Chicago. A mere change in name of consignee at destination is not considered a reconsignment and is permitted without charge. No charge is made for reconsignment of fruits or vegetables, except potatoes, with some territorial modifications. For the reconsignment of coal and coke at Chicago and Peoria there is no charge when the reconsignment order is in the possession of the carrier when the shipment arrives, otherwise a charge of \$2 applies. At other points, if the first reconsignment is made before the arrival of the car or within 24 hours after the first 7 a. m. following notice of arrival, no charge is made. After the first 24 hours the charge is \$2. Charges for the second and third reconsignments of coal and coke are \$3 and \$5, respectively, and no more than three reconsignments will be made. Special rules apply to the reconsignment of grain at Chicago and Milwaukee. The general rule of the Illinois Central provides for reconsignment without extra charge if request is given in time to permit the shipment to move over a route via which a through rate is in effect. The Chicago, Milwaukee & St. Paul provides for its lines east of the Missouri River that carload freight of all kinds, except fruits and vegetables, may be recon-



signed before delivery to a point beyond in the same general direction at a charge of \$2. When the destination of the shipment is changed before the car reaches the billed destination, no charge is made. One of the principal exceptions is in favor of shipments of coal at St. Paul, Minneapolis, and Minnesota Transfer, Minn., where for the first reconsignment, if made before the arrival of the car or within 24 hours thereafter, no charge is made. For reconsignments after 24 hours the charge is \$2. Fruits and vegetables, except potatoes, at Chicago, are reconsigned without charge. Grain is also excepted from the general rule, but is subject to charges under various conditions. The general rule of the St. Paul for its lines west of the Missouri permits reconsignment without charge, but shipments of grain, grain products, hay, straw, potatoes, and onions reconsigned in transit, or after arrival at original destination, or held in transit for orders, are subject to a charge of \$2 per car for the service. No charge is made for the change of the name of consignee at destination. The general rule and principal exceptions of the Northern Pacific are similar to those of the western lines of the St. Paul. The lines of the Atchison, Topeka & Santa Fe system permit reconsignment at the through rate without extra charge, but with exceptions applicable to particular traffic. Charges are made for the reconsignment of coal and lumber, the former being \$2 for reconsignment en route or within 24 hours after the first 7 a. m. following arrival, and the latter \$5 en route and \$6 within 24 hours after arrival. One dollar is added to these rates for each subsequent period of 24 hours and no reconsignment is permitted after 72 hours. The general rule of the Union Pacific provides a charge of \$2 for a change of destination before placement for unloading. After placement the charge is \$2, with the addition of tariff charge for necessary switching. Additional reconsignments are made at the same rates. When no joint rate is published and the tariff rates to and from the point of reconsignment are applied, no charge is made for reconsignment. Exceptions are made in favor of lumber, coal and coke, grain and grain products, alfalfa meal, cement, green fruits, live stock, and some other commodities. No charge is made for the first reconsignment of coal or coke if made before the arrival of the car at billed destination or within 24 hours thereafter. For the first reconsignment after 24 hours the charge is \$2 and the charges for additional reconsignment are progressively higher, but no more than three reconsignments of coal are permitted. When the reconsigning order is presented within 24 hours after arrival at destination, a change in consignee or location within a terminal is made without charge unless additional switching is required, in which case the switching tariff applies.

## THE PROPOSED TARIFFS.

Neither the general necessity of the reconsigning service nor the general propriety of a charge for the service may be said to be in issue in this proceeding. In many cases we have considered these questions and have held that reconsigning services should be performed by the carriers in connection with their transportation services, and under the circumstances of record in those cases have held that a charge for the service, in addition to the freight rate, based upon cost and including a reasonable profit, is proper. *Beekman Lumber Co. v. K. C. S. Ry Co.*, 17 I. C. C., 86; *Detroit Traffic Asso. v. L. S. & M. S. Ry. Co.*, 21 I. C. C., 257; *The Detroit Reconsigning Case*, 25 I. C. C., 392; *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 144; *Becker v. P. M. R. R. Co.*, 28 I. C. C., 645; *Doran & Co. v. N., C. & St. L. Ry.*, 33 I. C. C., 523; and *Commercial Exchange of Philadelphia v. R. R. Co.*, *supra*. Nothing in this record warrants a modification of these general views. It is therefore unnecessary to review the allegations of either protestants or carriers bearing upon these general questions. The carriers, in the tariffs now before us, are not proposing a withdrawal of the reconsigning service, and the questions here to be considered pertain to the reasonableness and propriety of the proposed charges and rules under the peculiar circumstances of traffic and situation of record in this case.

Although the adoption of the proposed tariffs would result in materially greater uniformity in reconsigning regulations than now exists, there would still remain many deviations from uniformity, not only through exceptions affecting particular commodities and localities, but to some extent in the general or basic rules themselves. The proposed general rules of the Erie Railroad Company are here presented as a basis for discussion:

## DEFINITION.

1. For the purpose of applying the following rules, the term "diversion or reconsignment" means a change in the name of the consignee, change in the name of consignor; change in the route at owner's request; change in destination; any instructions necessary to effect delivery and not shown on original billing.

## REQUESTS FOR DIVERSION OR RECONSIGNMENT.

2. If request is made for the diversion or reconsignment of freight in carloads, this company will make diligent effort to locate the shipment and effect diversion or reconsignment, but will not be responsible for failure to effect the diversion or reconsignment desired unless such failure is due to negligence of its employees.

**CHARGE FOR DIVERSION OR RECONSIGNMENT.**

3. If a car is diverted or reconsigned in transit prior to arrival at original destination, or if the original destination is served by a terminal yard, then prior to arrival at such terminal yard a charge of \$2 per car will be made for such service, except as otherwise provided in rules 5 and 8.

4. If order for diversion or reconsignment of car is placed with the local freight agent at billed destination, or other designated officer, in time to permit instructions being given to yard employees prior to arrival at such billed destination or terminal yard serving such destination, a charge of \$2 per car will be made for such service, except as otherwise provided for in rule 8.

5. When a car is stopped prior to arrival at original billed destination on request made by consignee or consignor, a charge of \$2 per car will be made for such service and the point where the car is stopped will be considered the destination of the freight.

6. If the car is reconsigned after arrival at original billed destination or terminal yard serving such destination, or if reforwarded without being unloaded, a charge of \$5 per car will be made if the car is reconsigned or reforwarded to a point outside of the switching limits.

**RECONSIGNMENTS WITHIN SWITCHING LIMITS AFTER PLACEMENT.**

7. Cars that have been placed for unloading and which are subsequently reforwarded to a point within the switching limits of the billed destination will not be subject to reconsignment charge, but will be subject to the published industrial or local tariff rate on file with the Interstate Commerce Commission and state commissions, in addition to the rate from point of origin to billed destination.

**RECONSIGNMENTS WITHIN SWITCHING LIMITS BEFORE PLACEMENT.**

8. (a) A single change in the name of the consignee at first destination, and (or) a single change in the designation of his place of delivery at first destination, will be allowed without charge if order is received in time to permit instructions being given to yard employees prior to arrival of car at first destination or at the terminal yard serving such destination.

(b) If such orders are received in time to permit instructions to be given to yard employees within twenty-four hours after arrival of car at terminal yard a charge of \$2 per car will be made.

(c) If such orders are received subsequent to twenty-four hours after arrival of car at terminal yard a charge of \$5 per car will be made.

**FREIGHT RATE APPLICABLE.**

9. These rules and charges will apply whether shipments are handled on local rates, joint rates, or combination of intermediate rates. The through rate to be applied under these rules is the rate on file with the Interstate Commerce Commission or state commission from point of origin via the reconsigning point to final destination in effect on date of shipment from point of origin. If the rate from original point of shipment to final destination is not applicable through the point at which the car is reconsigned, in connection with the line moving the traffic to that point, the sums of the locals will apply, plus reconsigning charge.

## LIMITATION OF DIVERSION OR RECONSIGNMENT ACCOUNT OF EMBARGO.

10. No freight can be reconsigned or diverted under these rules to a station or point of delivery against which an embargo has been placed, either during the existence or subsequent to the removal of such embargo, unless such freight was forwarded from point of origin prior to the date effective of the embargo or subsequent to its removal.

These general rules, in substance but with some variation, are proposed by practically all of the roads of the country, with the exception of the principal New England lines. Their effect would be a substantial increase in charges for a great majority of the reconsignments as now performed, especially in the west. In some instances of particular roads and traffic, reductions would be effected. In the preceding section of the report it has been shown that many of the roads now have general reconsigning rules which impose charges of \$2 and \$5 for the service, but that numerous exceptions are made in favor of particular traffic. The most common exceptions are in favor of coal, lumber, grain, and certain perishable commodities, especially fruits and vegetables. It is not proposed by the schedules under suspension to make any change in rules or charges with respect to reconsignment of fresh or green fruits and vegetables, including potatoes, onions, fresh berries, and melons. The character of these commodities indicates the propriety of making them an exception to any general rule. The principal contentions in the record before us have centered upon the proposed increases in reconsignment charges on commodities now excepted from the application of the general reconsignment rules, and to which it is proposed to apply those rules as revised in the suspended tariffs. These proposed increases are opposed on account of the alleged peculiar needs of the particular traffic affected.

The present charge at the New England gateways is usually \$2, but the New England lines propose merely to discontinue their special charges and rules for hold points, leaving in effect upon reconsigned traffic at all points the freight rates and minimum charges outlined in the preceding section of the report. Under these changes the use of the present hold points for reconsigning would not be denied; on the contrary, witnesses for the carriers expressed the belief that under the proposed rules shipments for reconsignment would still be billed largely to those points, but that the higher charges proposed would reduce the number of reconsignments at such points, thus relieving congestion and spreading the service among a greater number of stations. It is therefore apparent that the matter of principal concern to the shippers is not the discontinuance of tariff designation of hold points but the proposed increase in charges. They urge that the carriers should con-

tinue the present provisions as compensation for their irregular service.

We shall now discuss separately the foregoing rules.

**RULE 1.—DEFINITION.**

The enlargement of the definition of reconsignment to include a change in the name of the consignor is largely an innovation. Examination of the current tariffs of 20 important lines and systems discloses but one, the Atchison, Topeka & Santa Fe, now having such a provision. This feature of the proposed rules was not made the subject of specific protest and it has received comparatively little attention in the record. The present tariffs of the Santa Fe, as understood, impose no charge for a change in consignor. The proposed tariffs apparently would impose charges of \$2 and \$5 for the service. The issuing of a new bill of lading changing the name of the consignor is undoubtedly a service for which a reasonable charge should be made in addition to the rate. In the absence of more specific evidence of cost, it must be held that the carriers have not justified the charges proposed. Upon the facts before us it appears that a charge of \$1 for this service would not be excessive, and it is our conclusion that a charge has been justified to that extent.

A representative of Swift & Company, a shipper of live stock, fresh meats, packing-house products, and dairy products, appeared in opposition to the proposed charges for "change in route at owner's request." He testified that shipments of those commodities originating at Missouri River points and routed through Chicago to eastern destinations are diverted, when delayed, at Joliet, Ill., via the Michigan Central Railroad, thus saving 24 hours in time as compared with the route through Chicago. It is claimed that such changes are in the interest of the carriers, avoiding claims for the loss of the perishable commodities and reducing stops for icing; therefore, no charge should be made. It would appear that a change in route largely in the carrier's interest would ordinarily be made by the carrier of its own volition, obtaining the shipper's consent when necessary. The tariff apparently assumes that a request by the shipper springs primarily from his prospective benefit. A tariff provision which would require the weighing and balancing of the respective benefits of carrier and shipper would be largely inoperative and would give opportunity for abuse. This witness and others claimed also that no charge should be made for a reconsignment or change in route made necessary by an embargo or by the confiscation of freight. The justice of this view is apparent, and in this case a tariff provision seems practicable. It is our conclusion that an exception should be made to cover such cases. The exception in favor of such

shipments should be so stated as to prevent undue preference through abuse thereof.

The fourth clause of the definition was the subject of much criticism from protestants on the ground of indefiniteness and the possibility of its application to delivery instructions which would not involve any change in billing or carrier records. It was the unanimous testimony of the carrier witnesses that a charge for the execution of a delivery order not requiring a change in billing was not intended. This should be made clear in the tariffs.

#### RULE 2.

Proposed rule 2 is a continuation of the present common rule and requires no comment.

#### RULE 3.

Rule 3 contemplates a charge of \$2 for the service of intercepting a shipment before it reaches its billed destination and forwarding it to a different destination. The difficulties sometimes encountered in thus intercepting a shipment have been described. In addition, a change of destination often involves switching and the holding of the car at point of diversion. We find that the proposed charge has been justified.

Most of the carriers propose also the following rule, to be carried as a note under rule 3:

On shipments originating within the switching limits of stations on the lines of this carrier, no charge for diversion or reconsignment will be assessed if orders for such diversion or reconsignment are received at initial billing point before car leaves the yard at which the road haul begins.

Several of the protestants attacked this rule on the ground that it would result in unjust discrimination against shipments originating at points outside switching limits. For example, a shipment originating at Iola, Kans., reconsigned at Kansas City to a point beyond, would be subject to a reconsigning charge, while a competing shipment, originating at a point within the switching limits of Kansas City, would be reconsigned without charge at the yard marking the beginning of the road haul. Protestants assume that the carrier service in these cases would be the same; but this is not evident. The provision appears to be related to others in which a more or less arbitrary distinction is drawn between road service and service within terminals. The evidence of record is insufficient to determine whether unjust discrimination would result from the application of the note in question.

#### RULES 4 AND 6.

Rules 4 and 6 are in a sense related, as they both deal with reconsignment from billed destination, the one on orders placed before the arrival of the shipment, the other after.



These proposals are earnestly resisted by protestants representing the grain, feed, hay, and wholesale lumber interests of New England and the middle states, who now reconsign at the hold points in those sections. The present charge for reconsignment at trunk line hold points on orders received by the carrier before the arrival of the shipments is \$1 per car, and on orders received after arrival, \$2. The proposed tariffs would make the same charges on shipments billed to hold points for reconsignment as on shipments reconsigned at final destination, namely \$2 and \$5 per car.

The use of the hold points in trunk line territory, particularly in connection with the traffic in grain, grain products, hay, and straw, was described in the report in *Commercial Exchange of Philadelphia v. R. R. Co.*, 38 I. C. C., at page 552. Complainants in that case again appeared in this proceeding and repeated and amplified their testimony regarding the necessity of the reconsigning service at hold points. The New England dealers in those commodities testify similarly, with added force derived from their greater distance from points of shipment and the consequent greater irregularity in the delivery of their shipments. In addition to the New England gateways already mentioned, these dealers use also the trunk line hold points, especially Lyons and Hornell, N. Y. The commodities are purchased largely in central freight association and western trunk line territories. From 75 to 80 per cent of the shipments are billed directly to customers—retail dealers and consumers throughout New England—and the remaining 20 to 25 per cent are billed to hold points for reconsignment as needed. During the past year, owing to the unusual irregularity of railroad service, the proportion of reconsigned shipments has been much larger. They are used to supply demands which can not be met in time by shipping directly from the territory of production. A witness of 30 years' experience in the grain business at Boston testified that the hold points were established by the New England railroads some 30 years ago. Formerly grain was billed to Boston, and its subsequent distribution to points of consumption frequently involved delays and back hauls. The Boston & Maine first established hold points at Mechanicville and Rotterdam Junction, New York, and its example was soon followed by the New Haven and the Boston & Albany at points on their lines. At first the free time at hold points was four days, and the demurrage charge was \$1 per day thereafter. No charge was then made for the reconsignment, but later a charge of \$1 and finally of \$2 was made. The free time has been reduced successively from four days to two days and from two days to one day. At present a great majority of reconsignments in New England and trunk line territories are made at the hold points.

The dealers testify that they would prefer to bill all of their shipments directly to customers but that this would not meet the needs of the trade. They say that if assurance could be given of a transit time of 15 days, or even of 30 days, from Chicago to Providence, for example, purchases could be so regulated as to dispense with so-called "transit grain." Numerous exhibits were filed showing the period in transit of shipments received by the New England dealers. The following is representative and covers shipments of oats, corn, and feed received by the Webster-Tapper Company, of Boston, during the first four months of 1917. It is intended to show the delay and irregularity in movement, and, from the shippers' standpoint, the loss of car efficiency chargeable to the carriers. In arriving at the "fair average time" the protestants used as a basis an allowance of 14 days for the movement from Chicago to Boston, with corresponding allowances for different distances. The statement includes 70 reconsigned cars, nearly all of which were ordered reconsigned before arrival at hold points. Details are given as to each shipment, but it is deemed unnecessary to reproduce them. The destinations are various points in Massachusetts, New Hampshire, and Rhode Island.

*Transit period of shipments of oats, corn, and feed, received by Webster-Tapper Company, Boston, Mass., January 1 to April 30, 1917.*

Number of cars.	Point of shipment.	Total days in transit.	Fair average time.	Total fair average time.	Excess days in transit due to carriers.	Longest time in transit.	Shortest time in transit.
1	Bay City, Mich.....	24	14	14	10	.....	.....
22	Buffalo, N. Y.....	318	7	154	164	27	7
1	Bowersville, Ohio.....	37	14	14	23	.....	.....
1	Barce, Ind.....	25	14	14	11	.....	.....
58	Chicago, Ill.....	1,928	14	812	1,114	69	12
1	Columbus, Ohio.....	20	14	14	6	.....	.....
1	Cottage Grove, Ind.....	36	14	14	22	.....	.....
1	Charlestown, Ohio.....	17	14	14	3	.....	.....
1	Columbus Grove, Ohio.....	27	14	14	13	.....	.....
1	Chillicothe, Ohio.....	41	14	14	27	.....	.....
1	Deshler, Ohio.....	22	14	14	8	.....	.....
1	East Joliet, Ill.....	43	14	14	29	.....	.....
1	Faribault, Minn.....	77	21	21	56	.....	.....
1	Gerard Point, Pa.....	14	7	7	7	.....	.....
1	Greencastle, Pa.....	31	7	7	24	.....	.....
2	Indianapolis, Ind.....	63	14	28	35	35	28
16	Kansas City, Mo.....	897	21	336	561	103	32
1	Kingston, Ohio.....	28	14	14	14	.....	.....
2	Sedalia, Ohio.....	59	14	28	31	35	24
4	Lancaster, Pa.....	35	7	28	7	12	7
1	Ludlow Falls, Ohio.....	27	14	14	13	.....	.....
1	La Paz, Ind.....	27	14	14	13	.....	.....
16	Minneapolis, Minn.....	885	21	336	549	150	11
8	Milwaukee, Wis.....	439	14	112	327	110	22
8	Midland, Ontario.....	519	14	112	407	80	60
1	Owasso, Mich.....	41	14	14	27	.....	.....
5	Peoria, Ill.....	192	14	70	122	50	31
1	Pekin, Ill.....	41	14	14	27	.....	.....
2	Philadelphia, Pa.....	17	7	14	3	11	6
1	Rensselaer, Ind.....	52	14	14	38	.....	.....
18	Syracuse, N. Y.....	127	7	126	1	11	3
1	Terre Haute, Ind.....	50	14	14	36	.....	.....
7	Toledo, Ohio.....	227	14	98	129	52	13
10	Tiffin, Ohio.....	852	14	140	712	103	69
4	Wilkes-Barre, Pa.....	44	7	28	16	20	6
1	Xenia, Ohio.....	36	14	14	22	.....	.....
203		7,316	.....	2,709	4,607	.....	.....

The service subsequent to arrival in reconsigning cars from hold points does not differ materially from that in reconsigning cars from other principal points of reconsignment. As already stated, 24 hours' free time is allowed on cars held for reconsignment, computed from the first 7 a. m. following arrival. On a car arriving at 8 a. m., for example, this rule gives practically two days' free time. The reconsigned shipments are allowed in addition the same free time for loading and unloading at origin and destination as is allowed direct shipments. The reason for this allowance without charge does not appear. Witnesses for the carriers who were questioned upon this point expressed the opinion that no free time should be allowed cars held for reconsignment. Shippers, on the other hand, declared that the carriers should allow the time as a part of their service under the freight rate.

Under the conditions described in the record and evidenced by the exhibits, one of which is here reproduced, it is clear that shippers during the winter of 1916-17 were at sea concerning the movement and arrival of their shipments. Attempts were made to secure data as to the regularity of movement in more normal periods, but without success. It was claimed, however, by the New England shippers that at no time has the movement of grain and feed from the west been sufficiently regular to enable them to dispense with the reconsigning service altogether.

Both carriers and shippers support their contentions largely by illustrations drawn from the extraordinary conditions of the past 10 months. The carriers point out the specific delays of reconsigned cars and their contribution to the congestion of terminals and other hold points where cars are held for reconsignment. The shippers, on the other hand, contend that the unusual delays of reconsigned cars are the result and not the cause of the congestion; that direct shipments have been delayed in equal proportion; and that the delays and general irregularities in service render the reconsigning service peculiarly necessary and proper while they continue, and should not be held to justify increased charges. However, neither justification nor condemnation of the proposed rules may be based wholly upon those conditions, which are largely the effect of unprecedented causes. The war demands and the enormous production in certain lines in 1916 started an unusually large flow of traffic from all parts of the country toward the Atlantic seaboard, principally for export. In the absence of adequate ocean shipping facilities, the traffic accumulated, first at the ports, but successively at points farther west, until the effects were felt acutely as far as Chicago and to some extent throughout the country. Embargoes and other extraordinary measures were resorted to. Demurrage charges were greatly increased to hasten the release of cars held for shipper's benefit, whether for reconsignment

or for loading or unloading. While these conditions must be given due weight, the consideration of rules for general application must have due regard to established principles. In the facts shown there is no sufficient reason for adopting a new or different test of the reasonableness of the reconsigning service or of the charges therefor.

The charges proposed in paragraphs 4 and 6 are also strongly opposed by the wholesale lumber interests. Lumber traffic, at the present day, moves largely from the south and from the Pacific coast to the north and east. Much of the lumber supply of official classification territory moves from the south through Cape Charles, Va., Hagerstown, Md., and the Ohio River and Mississippi River gateways, from Cincinnati on the east to St. Louis on the west. Cape Charles is an important recognized hold point on the Pennsylvania. At present there is no charge for reconsignment of lumber at Cape Charles, whether orders are received before the arrival of shipments or after. There is a charge of \$5 per car for reconsignment at Hagerstown but none for reconsignments ordered before arrival. At Cincinnati the Cincinnati, New Orleans & Texas Pacific and the Baltimore & Ohio Southwestern reconsign free before or after arrival. Several other lines make no charge if ordered before arrival, but charge \$2 after arrival and before placement, and \$3 after placement. Mounds, on the Illinois Central, and Cairo, on the Mobile & Ohio, are important reconsigning points for lumber, and no charge is made at either point. This is also true generally at points on the southwestern lines. At all of these points the proposed rules are intended to apply and would therefore increase the charges on a majority of reconsigned lumber shipments from the south. Eastbound shipments of lumber and shingles from Washington and Oregon are largely billed to hold points for reconsignment. Among these points are Laurel, Mont., on the Northern Pacific, Whitefish, Mont., on the Great Northern, Aberdeen, S. Dak., on the Chicago, Milwaukee & St. Paul, Pocatello, Idaho, on the Union Pacific, and Lincoln, Nebr., on the Burlington. There are many others. Under the present tariffs such shipments are allowed 10 days' stop at these points for reconsignment, without charge for that service but subject to the usual demurrage charges. After 10 days local rates to and from the reconsigning point are applied. Formerly the Northern Pacific charged \$5 per car for all reconsignments of these commodities, but competition of the other lines, it is said, forced a change. Under the proposed tariffs 10 days would still be allowed for reconsignment, but a reconsignment charge of \$5 would be made. On reconsignments ordered before arrival the charge would be \$2.

Witnesses for the carriers testified that lumber reconsignments on their lines have greatly increased in number in recent years and have become very burdensome. As some of the southern roads

make a charge for reconsignment, shippers route their traffic, as far as practicable, over other lines. A witness for the Mobile & Ohio, which road makes no charge, testified that the railroads are now expected to be "rolling lumber yards." No figures were given showing the increase in lumber reconsignments. A witness for the Northern Pacific, however, on which line such reconsignments are numerous, filed an exhibit showing the increase in reconsignments of all commodities effected through the office of the freight claim agent of that company for the period 1908 to 1916 to be 566.4 per cent, while the freight ton-miles increased only 56.8 per cent.

Much testimony was offered bearing upon the commercial value and necessity of reconsignment of lumber which it is not necessary or practicable to detail fully in this report. However, no claim is made of any inherent difficulty in storing lumber. Some of the wholesale lumber dealers, located at Philadelphia and New York, reconsign from 20 to 25 per cent of their lumber; others, at Cincinnati, Columbus, and other points, from 75 to 100 per cent. Dealers in yellow pine buy their stock at the sawmills in the south, paying for it when shipped and in some cases advancing the cash before shipment. The lumber is distributed to customers while in transit, according to their needs. This method is said to be of special value to the small manufacturers who can not afford to maintain sales agencies. Therefore, it is claimed, any restriction of reconsignment would tend to throw the business into the hands of large concerns. Direct dealing between the mill and the northern retailers is handicapped by distance. Transit cars, it is said, are of great benefit to the lumber business in times of car shortage.

Recently about one-half of the lumber shipments from the Pacific coast have been reconsigned, but ordinarily the proportion is only about 20 per cent. The Pacific coast shippers stress the necessity of reconsigning shingles, most of which are manufactured by small mills which have little or no storage capacity. Shingles are not only bulky but it is said they absorb moisture in storage, which increases their weight, affording an additional reason for prompt shipment. They are sold to wholesale dealers as soon as manufactured and are immediately consigned to Minnesota Transfer, or to some other hold point. They are in a majority of cases sold before reaching those points and are rebilled to final destination. Seventy-two per cent of the shipments of shingles are thus reconsigned. The shippers claim that their business has been built up under present methods and has been solicited and encouraged by the carriers for at least 20 years.

The lumber dealers contend that the performance of these services for many years under the through rates raises a strong presumption that the services are compensated by the rates. Witnesses for the car-



riers contend as strongly that the reconsigning services were never considered in fixing the rates. Positive proof of either contention is lacking. It may be assumed that the necessity for the reconsigning service arose almost at the beginning of railroad transportation, under circumstances which made it desirable to stop shipments before reaching their original destinations and send them to other points. Insolvency of the original consignee was doubtless one of these circumstances. To require the shipment to proceed to its original destination and to be reshipped would often result in useless transportation service. Permission to stop short of destination and to reship at local rates would be a natural step in the development of the practice, succeeded by the application of through rates, where in effect, from origin to the new destination. At first, as reasonably shown by the evidence, the reconsignments were few in number, corresponding to the peculiar exigencies which called for the service. One witness, who testified from his experience as a railroad agent as early as 1870, stated that reconsignments at that time were very rare and that the practice of reconsigning as a fundamental business process was then practically unknown. The reconsignments were then made without extra charge. It is the theory of the carriers, confirmed partly by memory and partly by tradition, that the present practice of shipping commodities before determining their final destination or consignee, leaving those factors to be determined while the shipments are en route, is a comparatively recent development, although it appears that the reconsignment of yellow-pine lumber has been practiced to some extent for many years.

While the expenses of the earlier reconsignments were, of course, included in the carriers' expenses as a whole, and to that extent were a factor in fixing the relation between expenses and revenues, in view of their infrequency it may be reasonably presumed that no special attention was given them in fixing specific rates. Witnesses for the carriers assert that the extension of the reconsigning service without charge has been the result of competition, the service operating as a bonus to secure traffic. The diverse practices of the carriers strongly confirm this view. Some of them have for many years made a charge for the service. The fact is that even at present only a minor portion of the lumber shipments, as a whole, are reconsigned. Upon the record we find that a charge for the service is proper.

Retail lumber dealers, with investments in yards and stock aggregating many millions of dollars, appeared in active support of the proposed charges for reconsigning lumber. Their position is that the exaction of the same freight rates on their direct shipments as are charged the wholesale dealers for transportation between the same points, with the additional service of reconsignment, is dis-



criminary. They allege that under present practices the wholesale dealers are permitted to use without expense to them the railway equipment and yards for the storage of their stocks, while the retail dealers must provide their own storage facilities at great expense. The fact that shippers are able to derive an advantage over competitors through the service of the carriers is, of course, not in itself a reason for condemning a transportation practice. It is alleged, however, that shipments are delayed through causes not arising from transportation. When a shipment reaches a hold point unsold and the market is rising, the dealer has an incentive to hold his shipment awaiting a further advance in price. On a falling market, on the other hand, the customer defers his purchase. In either case, it is said, the car is detained, the terminal congested, and other shippers deprived of the use of the carrier's equipment and other facilities. Delays arising from such causes are to be unqualifiedly condemned. The fact that many of the wholesale lumber dealers reconsign practically all of their shipments, while the eastern grain dealers, whose situation has been discussed, reconsign only from 20 per cent to 25 per cent of their shipments, indicates a radically different cause and purpose of the reconsignments in connection with the two classes of traffic. The possibility of such results of the carriers' present practices supports the belief that adequate compensation for the full period of detention awaiting orders and, if necessary, a penalty in addition, are in the public interest.

The proposal of the New England railroads to withdraw their special arrangements for reconsigning at the New England gateways is not justified upon the record. No evidence was offered in support of this proposal. The application of freight rates from the billed destination to a new destination, although less than locals, would often result in much higher charges than are proposed for similar services in trunk line territory and in other portions of the country. Most of the rates on this traffic are the same to all New England points. Upon this record there appears to be no reason why the New England carriers should not be permitted to make effective at these so-called hold points the reconsignment charges which are approved in this report. The desire of the carriers to establish uniform rules throughout the country covering the service of reconsignment is commendable, and it would seem that the beneficial results of such uniformity would be especially felt in the contiguous and relatively limited New England and trunk line territories.

Rule 4 contains a provision operative upon condition that orders are received in time to permit instructions to be given to yard employees. This provision was attacked upon the ground of indefiniteness. It is asserted that it would afford opportunity for preferential treatment of shippers and would be the source

of disputes between carriers and shippers respecting the sufficiency of time in specific cases for the transmission of instructions. The carriers reply that it is wholly impracticable to fix a definite period for application at all stations and under all circumstances and scout the idea of trouble with shippers in the administration of the rule. The New York Central has had in effect since 1907 a rule of substantially similar wording, and it is said that no difficulty has been found in its operation. The proposed rule is clear as to intent, and if honestly administered it will probably result in a greater degree of justice to both carriers and shippers than could be realized from a rule which would attempt to fix a definite period for general application.

Rule 6 provides a charge of \$5 for reconsignment to a point "outside of the switching limits" if the car is "reforwarded without being unloaded." This part of the rule must be considered in connection with rule 7, which, as will appear in a later paragraph, has been found to be justified. Rule 7 provides that cars "that have been placed for unloading and which are subsequently reforwarded to a point within the switching limits" will be subject to the published industrial or local tariff rate. This comparison of rules 6 and 7 shows that in certain instances they would result in fourth section violations, as, for example, where a local switching charge in excess of \$5 is applied to a car reforwarded to a point within the switching limits which is intermediate to a point outside of those limits, and both points take the same through rate for the transportation of the shipment from point of origin. The difficulty arises from the fact that the carriers have constructed these two rules on conflicting principles. In each case the car has reached its billed destination and has been placed for unloading. Under rule 6, if the car is then reforwarded to a point outside of the switching limits, the new movement is treated as a reconsignment, but if reforwarded to a point within the switching limits, it is treated as a reshipment. Upon the record before us there appears to be no difference in service which would explain this difference in treatment. It would seem that the correct principle has been applied in framing rule 7, for a car which has been placed for unloading at its original billed destination has in fact been delivered. A subsequent movement might therefore be properly regarded as a reshipment. Rule 6 should be given such revision as will eliminate fourth section violations of the character outlined.

With the exception thus indicated we find that the charges proposed in rules 4 and 6 have been justified. These findings do not necessarily require the elimination of hold point practices. The general result will be to remove the differences in the charges for

reconsignment between the recognized hold points and other points where reconsignment is or may be practiced.

#### RULE 5.

Rule 5 provides a charge of \$2 for stopping a shipment before reaching its billed destination, to be held awaiting orders. The service contemplated includes the interception of the shipment and the switching of the car to a track for holding. The principal criticism of this rule arises from the fact that the point at which the shipment is stopped is considered its destination, to the effect that when notice of reconsignment is subsequently given and the shipment is reforwarded it is subjected to an additional charge of \$5 under rule 6, making an aggregate charge of \$7 for the aggregate services of stopping, holding, and forwarding. The service already described as covered by rule 6 includes the setting out or switching of the car to a hold track. The point is made that the switching to a hold track is covered by rule 5 as well as by rule 6. We have found, however, that a charge of \$2 for reconsignment in transit has been justified, and in many instances to accomplish this service switching is unnecessary, while the service contemplated in rule 5 requires switching to a hold track. The wording of rule 5 is criticized because of the possibility that it may be interpreted to require a reconsignment charge on shipments stopped in transit for any purpose, such as icing or weighing. The rule should be so amended as to exclude stops for purposes other than delivery or reconsignment. We find that the charge proposed in rule 5 has been justified.

#### RULE 7.

By rule 7 the carriers propose to charge the published industrial or local tariff rate for reforwarding, to a point within switching limits, a car which has been placed for unloading. In support of this rule they point out that there is considerable variation in switching charges at terminals throughout the country, and that an adequate, uniform charge for the service here discussed would in some instances exceed the switching charge, while in others it would be less than that charge. The proposed rule meets with strong objection from the shippers at Chicago, where the switching charges are relatively high, but is acceptable to the shippers at Sioux City, where the switching charges are relatively low. The question thus presented is whether the charge for the service contemplated in rule 7 should differ from the switching charge in effect in the same terminal. The record before us shows no essential difference in service between the reforwarding, to a point within switching limits, of a car which has been placed for unloading and the usual switching of a car within the same limits. It would seem therefore that the charges for these services should not differ. We find that rule 7 has been justified.

## RULE 8.

The charges proposed in rule 8 in particular, and to a less extent, the preceding rules also, are subject to vigorous opposition from the coal-shipping interests. To understand this opposition fully it is necessary to review the present methods of shipping and marketing coal.

As the consuming territory for coal is coextensive with the country, and the areas of production, especially of anthracite coal, are local, it follows that much of the coal traffic is long distance. The consumption of coal varies greatly with the season and with industrial activity. The matter of adequate car supply at mines has been a matter of difficulty for many years and numerous cases involving the distribution of cars at mines during periods of car shortage have come before us. Although the type of equipment required to fill particular orders sometimes varies, depending upon the kind and quantity of coal desired and the consignee's unloading facilities, it is the general practice of mines during periods of car shortage to load to capacity all available equipment regardless of its type or the requirements of particular consumers. In some cases coal is billed at the mines; in others, at some junction point more or less distant, which serves as the weighing and billing agency for a group of mines. Coal frequently moves from the mines in solid trains, billed to wholesale dealers or mine sales agents at industrial centers. Upon its arrival at a terminal yard serving the destination, the carrier's agent at that point notifies the consignees, usually by telephone, of the arrival of their shipments, requesting instructions for disposition. Upon receipt of such instructions, the cars are ordered switched to points of delivery. A small portion may be reconsigned to other stations. To show the prevalence of the practice of reconsignment at destination, a large number of coal dealers, representing the different communities, testified that practically all of the coal handled by them at New Orleans is reconsigned; at Minneapolis, 90 per cent; at Chicago, 50 per cent to 90 per cent; at Louisville, 75 per cent; at Omaha, practically all; at Albany, from 30 per cent to practically all. Of the coal shipments of the Michigan Central to Detroit, Mich., in October, 1916, 65 per cent were reconsigned; of the shipments of New York Central lines to Chicago in the same month, 41 per cent. These figures include reconsignments of anthracite coal as well as of bituminous. A witness for the Erie testified that on the lines of that company east of Salamanca, N. Y., during three months of 1916, only 1 per cent of the anthracite coal shipments was reconsigned. It is presumed, however, that reconsignments on connecting lines and within switching limits were not included in this estimate.

The present tariffs governing charges for the reconsignment of coal differ greatly, as shown in the preceding section of the report.

The eastern carriers, as a rule, but with some exceptions, charge \$2 for reconsignment at destination, but nothing for a diversion en route. The lines carrying eastern coal to Chicago, Detroit, and Minneapolis, for example, reverse this rule, making no charge for reconsigning coal at destination, but making a charge of \$2 for a diversion in transit. This difference in practice is not explained. It is possible that on account of the shorter hauls the reconsignments between terminals in eastern territory serve the purpose to some extent of the reconsignments within terminals at western cities. Western coal delivered at Chicago is reconsigned without charge either in transit or at destination, provided the order is received before the arrival of the shipment. If received after arrival, the charge is \$2. With respect to other cities, generally speaking, however, coal is now reconsigned within switching limits by the western roads without charge. The respondents propose to make the same general rules and charges apply to coal as to other commodities. Under present practices subdivision (b) of rule 8 would require a charge of \$2 per car upon a very large proportion of coal shipped to Chicago and other western cities, and on most of the eastern lines the proposed rules would require an increase on reconsignment in transit, and under subdivision (c) on reconsignment at destination after 24 hours.

Witnesses for the carriers assert that the service in reconsigning coal shipments is substantially the same as that in reconsigning other traffic and that the reason for the present exceptional treatment of coal is competition among carriers. During the period from January 24 to April 1, 1917, charges similar to those now proposed were in effect on Illinois state traffic under permission of the public utilities commission of that state. A witness for the Illinois Central testified that during that period the number of reconsignments of state traffic, principally coal, was greatly reduced. For example, the number of cars of bituminous coal received by the Illinois Central at East St. Louis in October, 1916, was 3,530, of which 1,654 were reconsigned. The number received in February, 1917, was 2,220, of which 812 were reconsigned; of the 812, 779 were reconsigned in transit without charge, 30 were reconsigned at \$2 each, and 3 at \$5 each. No figures are given as to other points.

In opposing the proposed charges, the protesting coal shippers claim that the present methods of handling coal are necessitated by the nature of the traffic and by the character of transportation service afforded by the carriers. They contend that the irregularity of the movement is such that it would be impossible to anticipate the arrival of shipments with sufficient certainty to enable them to place reconsigning orders before the arrival of the shipments, thereby



availing themselves of the free service proposed in subdivision (a) of rule 8; that advice from the carriers as to the location or progress of shipments is difficult to obtain, unreliable and often so delayed as to be valueless; hence it is necessary to await the arrival of the shipments before giving orders for disposition. Reconsignment is an expense to shippers and it is testified that they would prefer to use direct shipments if the needs of customers could thereby be met. Numerous exhibits were filed by protestants showing the irregularity of the movement of coal from mines to Detroit, Chicago, and Omaha during the past year. One of the Chicago protestants testified that for November, 1916, shipments of anthracite coal were in transit to Chicago from 10 to 34 days; for December the variation was from 7 to 87 days; and for January, 1917, from 6 to 64 days. Another Chicago shipper filed comparative statements showing that during January, February, and March, 1917, the average period in transit of his coal shipments from Portsmouth, Ohio, to his yards at Chicago was about 11½ days. For the corresponding months of 1915, the period was less than 5 days.

The shorter hauls and resulting greater regularity of deliveries of Illinois coal at Chicago apparently enable shippers to give disposition orders on such coal before the arrival of the shipments. A witness for the Illinois Central testified that all but 5 per cent of the coal handled by that company into Chicago is either billed directly or ordered reconsigned before arrival. At Minneapolis and St. Paul, however, much of the hard coal supply of those cities is shipped from the docks at Duluth and Superior, only about 145 miles distant. Shippers assert that if cars could be supplied regularly and promptly at point of shipment, and if deliveries at destination could be made without delay after arrival, reconsignments at destination would be unnecessary. Under existing conditions they find it necessary to reassign much of their coal after arrival. The bituminous coal supply is shipped principally from southern Illinois, and in this case the distance results in conditions similar to those surrounding the shipment of eastern coal to Chicago.

The protestants contend further that the reconsignment of coal, on the whole, assists rather than retards movement and release of cars. In that connection they refer to our findings in various cases, particularly *Detroit Traffic Asso. v. L. S. & M. S. Ry. Co.*, 21 I. C. C., 257, in which we said, among other things, that the practice of reconsignment results in an increase in the fluidity and regularity of the movement of commodities, an important elimination of economic waste in the reduction of the handling of goods between the producer and the consumer, an increase in the celerity of movement, and the facilitation of the direction of commodities to the point of most active demand. The issue here, however, is the reasonableness



of certain charges proposed for the service. In order to avoid the proposed charges, it is asserted, shippers would endeavor to increase the proportion of direct shipments, which would result in delays in loading cars at the mines and in frequent bunching en route. It is stated that during the effective period of the charges on Illinois state shipments, previously referred to, there was a great increase in the reconsignments of interstate coal shipments. Definite information regarding the detention of reconsigned coal shipments is also lacking, but a principal witness for the carriers testified that the reconsignment of coal is well systematized and when there is a demand for the commodity there is little delay.

The evidence of record supports the conclusion that the present practices of reconsigning coal have been in existence for very many years. No evidence was offered to show that they have ever been different. From this it is contended that the reconsigning service in coal traffic, like other common incidents of transportation, is covered by the freight rates. Respondents assert that we have no right to consider this contention, citing *Interstate Commerce Commission v. Stickney*, 215 U. S., 98, but we have not regarded that decision as restricting our power of investigation of proposed rules, under section 15, or as affecting the burden of proof. *Car Spotting Charges*, 34 I. C. C., 609; *Lighterage and Storage Regulations at New York*, 35 I. C. C., 47; *Rates in Chicago Switching District*, 34 I. C. C., 234; and *National Poultry, Butter & Egg Assn. v. B. & O. S. W. R. R. Co.*, 43 I. C. C., 392. Protestants point to the fact that in various cases before us involving increased rates on coal the carriers have urged their services of reconsignment and diversion in connection with that traffic. In the *1915 Western Rate Advances Case*, 35 I. C. C., at page 605, we said:

Bituminous coal is not stored at the mines, but is loaded as mined; and because of this and the resulting facts that cars are sometimes ordered and not used and sometimes loaded and not immediately billed out, and that diversion in transit is necessary in order that coal may be delivered when and as needed, cars in this traffic are kept in use for a longer time, compared with the distance hauled, than is true of the average of other traffic. The cost incident to the assembling and diversion of coal is material, but the exact measure thereof can not be determined from this record.

This language is quoted in *Indiana and Illinois Coal*, 40 I. C. C., 603. In both of these cases proposed increased rates on coal were permitted to become effective.

With respect to this contention, however, we think that it is impossible to distinguish between coal and other commodities, and that reconsignment, as a special service, warrants a proper charge in addition to the rate.

It seems clear that if notice could be given consignees in advance of the arrival of their shipments, either of coal or of

other commodities, disposition orders might be filed with the carrier's agent before the arrival, thus avoiding any delay to equipment and enabling the consignee to avail himself of the benefits of reconsignment at minimum cost. The practicability of giving such notice, barring the expense, was admitted by the carriers. It was assumed at the hearing that such notice would be necessary as to all shipments, whether delayed or not. Upon consideration this assumption does not seem necessary or reasonable. Notices could be confined to shipments unreasonably delayed, leaving the consignee to assume that other shipments were making normal progress. Experience should enable carriers and shippers to determine where to draw the line between ordinary and extraordinary delays. It is assumed that the consignee has his own means of getting information of the time of shipment from point of origin. The plan of giving passing notice on coal shipments has been tried in connection with coal traffic billed to Detroit for reconsignment, as discussed in our recent report in *Detroit Coal Co. v. M. C. R. R. Co.*, 46 I. C. C., 231, and in prior reports. See *Becker v. P. M. R. R. Co.*, 28 I. C. C., 645. The results were beneficial, although in that case the notices were given from Toledo, only about 50 miles distant, and the time between the receipt of notice by the consignee and the arrival of his shipments was too short. With the extension of the Detroit terminals and the removal of the reconsigning charge the notices were discontinued. The history of that experiment should by no means condemn the plan.

Provisions for passing notice are not found in the suspended tariffs, and are therefore not now properly before us, nor does it seem practicable at this time to express any view with respect to their general adoption by the carriers as reasonable practices in connection with the reconsignment service. If regarded as essential, this matter may be brought to our attention in a further proceeding.

Special pleas were made in behalf of traffic in other commodities, particularly cement, pulp wood, paper fruit wrappers, cooperage stock, and scrap iron, but the facts submitted and the contentions based thereon are not essentially different from those already reviewed.

The charge of \$5 proposed under subdivision (c) is admitted to be in part a penalty and is not based entirely upon additional service. Protestants opposed this provision upon the ground that detention is sufficiently penalized by the demurrage charge of \$2 per day, which became effective May 1. It does not appear, however, that a charge of \$2 is more than compensatory. The charge of \$1 per day, for many years and until recently in effect, was insufficient to force the release of cars used by shippers for storage purposes. Under the present rules, after five days the charge

is increased from \$2 to \$5. Aside from the length of the period before the higher charge would be applied under the demurrage rules, it is to be considered that the necessity of forcing the movement of cars held for orders is greater than in the case of cars held for loading or unloading. In the former case the cars are in the carriers' yards, while in the latter they are usually on public delivery or industrial tracks.

The sufficiency of present demurrage charges to prevent undue detention was urged by protestants in opposing other proposed rules. There is merit in the carriers' contention that a reconsignment charge is also necessary to effect the purpose. With the allowance of free time under the demurrage rules, the shipper hopes that he will be able to dispose of his shipment before demurrage accrues, and is inclined to minimize the hazard of failure; but with the certainty before him of a charge covering all detention he will make a greater effort to ship without reconsigning, or at least to reconsign without detaining cars. It was testified also that the assessment of demurrage charges at reconsigning points is frequently overlooked, and this was abundantly demonstrated by instances developed on the record.

The charge that the limitation in time to permit instructions to be given to yard employees found in subdivisions (a) and (b) of rule 8 is indefinite and would make possible the preferential treatment of shippers has been discussed in connection with rule 4.

We find that the charges proposed in rule 8 have been justified.

#### RULE 9.

Rule 9 was the subject of much criticism by protestants upon the ground that the assessment of a reconsignment charge, in addition to the sum of the local rates or intermediate rates, would be unreasonable and in violation of section 4 of the act. This provision is of principal interest and importance in connection with traffic moving over routes on which the joint through rates are made equal to the combination rates over a competing route. Traffic moving through the Ohio River crossings is the principal example. Rates on southern lumber moving to central freight association territory are usually made on Cairo and are equalized through other crossings. Using this example, the carriers contend that if not permitted to charge for reconsignments at Cairo, it will be impracticable to make a charge at Evansville, Louisville, or Cincinnati. To do so would drive the business to the lines using the Cairo crossing. They further contend that unless a charge is made at rate-breaking points shippers located at such points will be given an advantage over competing shippers at other points. The principal ground of opposition is the disparity between the service of reconsignment and the terminal services which

may be secured under the local intermediate rates. It is pointed out that under such rates the shipper may have his inbound shipment switched to an industry track for unloading, where it may be detained 48 hours without demurrage. The same car may be held an additional 48 hours for reloading, after which it will be switched to the carrier's tracks and forwarded, all under the local rates. The absorption of connecting line switching charges under local rates is also a frequent occurrence. From this comparison it is claimed that the assessment of a charge for the reconsignment of a loaded car, the service being admittedly less than in the case described, is unreasonable. It is also asserted that the charge at rate-breaking points could be evaded by taking delivery of shipments and reforwarding them. Similar contentions were considered by us in *Kehoe & Co. v. I. C. R. R. Co.*, 14 I. C. C., 541, in which it was said:

Wherever the through rate is equal to the sum of the locals a dealer situated at the point where the locals combine, as, in this case, at Cairo, may avail himself of such advantages as may result from making two shipments instead of one, but to obtain such advantages he must bear the increased expense incident to two shipments, and there must, in fact, be two shipments without any carrier or agent of the carrier acting for the shipper. Such advantage, if any, as may be incident to shipping in and out at an aggregate combination of charges equal to the through rate, can not be taken away except by condemning the making of a through rate by adding the locals. The mere fact that it is possible for a dealer situated at Cairo to do business in this way at greater cost, both to himself and the carrier, does not justify the Commission in holding as unlawful a reasonable reconsignment charge; \* \* \*.

Failure to make a charge for reconsignment under such circumstances would be inconsistent with the view that reconsignment is a special service. It is the practice of American railways to disregard to a great extent differences in terminal services in connection with the delivery or receipt of traffic, applying the same rates to and from all points within the terminal. It is not considered desirable to extend this policy to services not connected with the receipt, conveyance, or delivery of traffic. Special services have long been regarded as a fruitful source of discrimination between shippers and as a source of depletion of the carriers' revenues.

When the assessment of a reconsigning charge results in greater aggregate compensation to the carrier than the sum of intermediate rates, it can not be considered that section 4 has thereby been violated for the services performed are not the same in the two instances.

#### RULE 10.

Proposed rule 10, limiting reconsignments to embargoed points, is intended to extend the embargo to include shipments in transit at the date of the removal of the embargo. The purpose of the pro-

47 I. C. C.

vision, as explained, is to prevent an accumulation of traffic at points near the embargoed station or territory for quick reconsignment at the termination of the embargo. Such accumulation and reconsignment, it is urged, would immediately renew the congestion at the point formerly under embargo.

The situation may be briefly illustrated. A shipper located at A desires to ship a car to C, but C is embargoed, so he bills the car to B, a point near C, and as soon as the embargo is lifted offers the car for reconsignment to C. If he is allowed to do this, the carriers assert that the purpose of placing the embargo against C is wholly nullified, for not only is C immediately congested again, but other accumulations are created at points such as B. They say that the only object of the rule is to withdraw the service of reconsignment to C from cars which have been shipped from point of origin during the time when C was embargoed, for the reason that the first part of the rule "no freight can be reconsigned or diverted under these rules to a station or point of delivery against which an embargo has been placed" is superfluous, standing alone, for if a point is embargoed it is embargoed against a car offered for reconsignment as well as against a car offered for movement from point of origin. But it is not clear that the first part of the rule above quoted is without value. We recently ruled informally that demurrage does not accrue, under a general demurrage tariff, against a car which has been offered for reconsignment to an embargoed point upon the general principle that demurrage is assessable for detention for which the shipper is directly responsible and can abate, while an embargo is placed by reason of the carriers' disability. But if the carrier specifically provides in its tariff that it will not reconsign to an embargoed point it does not hold itself out to perform such service while an embargo is in effect and the shipper must either resort to a service that the carrier does hold itself out to perform, such as reconsignment to a point not embargoed, or must hold the car at the expense of demurrage, a possibility which he assumed under the published tariffs when the car left point of origin. The value of the first part of the rule, as quoted, is, therefore, that devices to defeat the essential purpose of the embargo will be discouraged by the assessment of demurrage on the cars held for reconsignment to an embargoed point.

The testimony in support of the rule, as a whole, was of a very general character and it is not found, upon the evidence before us, that the respondents have justified withdrawal of the reconsignment service altogether when the freight is forwarded from point of origin during the existence of the embargo. That part of the rule which provides that "no freight can be reconsigned or diverted under these rules to a station or point of delivery against which an embargo has



been placed" has been justified, and with this exception the rule is condemned. In so finding it will, of course, be understood that the propriety of no particular embargo is under consideration. If under all the facts a particular embargo could not be justified by the carriers, it is clear that they could not justify refusal to reconsign to the embargoed point, although the tariff might so provide.

The record affords evidence that in some instances shippers resort to a repeated use of the reconsignment service in connection with the same shipment for reasons which can not be justified from the standpoint of transportation. The tariffs of some of the eastern carriers now in effect contain a rule providing that only one reconsignment will be allowed upon any one shipment, exceptions being made as to shipments of fresh fruits and vegetables. If a second reconsignment is ordered the shipment is treated as a new consignment from the point to which first reconsigned. This rule has been in effect on certain lines for a considerable period of time, having become effective in the tariffs of the Pennsylvania Railroad Company in August, 1906. The current tariffs of the New York Central and Baltimore & Ohio embody the same rule. A rule providing that not more than one reconsignment will be allowed on a shipment would seem to be a reasonable regulation.

#### CHARGE FOR TRANSFERRING CONTENTS OF RECONSIGINED CAR.

The Chicago & North Western proposes the following tariff rule:

*Transfer account reconsignment.*—When destination or routing is changed and car containing the shipment is one that, on account of ownership, can not go forward to the new destination or via the new route and it is necessary to transfer the contents, actual cost of such transfer will be assessed.

This rule is not proposed by the carriers generally. The Chicago & North Western has in effect at the present time, included as a part of its general reconsignment charges, a rule similar to the above, except that it assesses "an additional charge of \$2 per car" instead of "actual cost" of transfer. The proposed rule, while applicable in connection with a reconsigned car, provides what is essentially a transfer charge. Its evident purpose was to conserve cars on the rails of the owning line and to prevent the circumvention of certain car service rules, which were based on the ownership principle, by reconsignment of the car to a destination for which it would not originally have been furnished. The proposed rule raises at once a number of questions, not adequately discussed upon the record, but for present purposes it is sufficient to say that the car service rules referred to, with which the rule in question is inseparably connected, are not now in effect. We find that the proposed rule has not been justified.



## EXCEPTIONS TO THE GENERAL RULES.

It remains to consider certain controversies arising from proposed regulations which are exceptions to the general rules already discussed.

The carriers operating west of trunk line territory do not propose any general change in their regulations for the reconsignment of grain. At Pittsburgh there is now a charge of \$2 per car for the reconsignment of grain, feed, hay, or straw to points beyond the switching limits but no charge for reconsignments to points within. If the reconsignment involves a back haul, a mileage scale, less than the local rate, is applied. Some of the lines charge \$2 for the reconsignment in addition. It is proposed in the suspended tariffs to treat hay separately and to give feed and straw still different treatment. Grain is to be reconsigned within 24 hours after the first 7 a. m. following notice of arrival without charge if to points within switching limits, but with a charge of \$2 per car if to points outside. After 24 hours but within 48 hours the charge is \$2 per car either within or beyond switching limits and after 48 hours \$5 per car. Hay is to be reconsigned within 24 hours after placement for inspection or diversion at \$2 per car to any point, and after 24 hours at \$5. Feed and straw are to be placed under the general rules. It is proposed to eliminate the back-haul provision and to charge on such reconsigned shipments the combination of local rates and the reconsignment charge in addition, as provided in rule 9 of the general rules.

At other points, notably at Chicago and St. Louis, the carriers propose similar disassociation of hay, feed, and straw from grain, with the imposition of higher reconsignment charges and reduction of free time on the former commodities. This proposal is resisted upon the principal ground that inspection of these commodities, like the inspection of grain, is necessary, and that it is the duty of the carriers to allow reasonable time for that purpose without charge. Inspection of grain is now provided for by law, and it is expected that governmental supervision of the grading of the other commodities will soon be in force. The purpose of this inspection, whether performed by government or otherwise, is the determination by a competent and impartial authority, independent of both vendor and vendee, of the grade of commodities offered for sale, insuring fair treatment, avoiding disputes, and promoting trade in the commodities. While it is apparent that inspection is primarily for the benefit of the trade, it indirectly benefits the carriers by tending to increase the tonnage of the commodities and, in some cases, by reducing the detention of shipments at destination through their more prompt acceptance by consignees. It can not be assumed

that these benefits to the carriers are a fair offset to the regular detention of equipment and the other services necessitated by inspection at reconsigning points. The carriers are as clearly entitled to compensation for these services as for others. It is claimed, however, that the allowance of 24 hours for the inspection and reconsignment of hay should be counted from the first 7 a. m. after arrival and not from time of placement for inspection. Shipments can not be sold until inspected, it is said, and when inspection does not immediately follow placement the time for disposition is correspondingly shortened. A witness for the carriers suggested that the provision as written does not express the intent of the carriers and that it will be amended to meet this objection.

The elimination of the back-haul provision, it is testified, will affect most of the shipments of hay to mines near Pittsburgh which for any reason can not be delivered. Many of these mines are at the end of spur tracks and shipments refused at such mines must of necessity be back hauled. The carriers' position is that reconsignment contemplates a forward movement and that a back haul should be treated as a new shipment. Protestants contend that the service in back hauling a shipment is less than in transporting a new shipment. Quoting from protestants' brief:

In the case of a local shipment the carriers must furnish and switch in the empty car, and then switch out and transport the loaded car, for all of which it receives only the local rate. In the case of a reconsigned car, it is not necessary to furnish an empty, and the carrier has already received a considerable revenue on the shipment for the original movement inbound.

Although the reforwarding of a loaded car usually involves less terminal service than the receipt of one shipment and the forwarding of another, it is not customary to recognize the difference in fixing rates for reshipments. The carriers here propose to treat a back haul as a reshipment, applying thereto the regular reshipping rates. The proposed change is in the interest of uniformity and will tend to reduce unnecessary transportation service. For reasons already given in discussing the propriety of a reconsignment charge at rate-breaking points, the reconsignment charge in this case is justified.

The record discloses an apparently discriminatory situation respecting the reconsignment of grain at Pittsburgh as compared with reconsignment of grain at points in central freight association territory. At Cleveland and at Indianapolis, under local tariffs, there is no charge for the reconsignment of grain to points within or beyond the switching limits within 48 hours after the first 7 a. m. following inspection. It is not proposed to change these provisions. It is testified that shippers of grain who use the reconsigning services of the carriers at Indianapolis and other central freight association points are in direct competition with the shippers who consign at Pitts-

burgh, both selling in the territory adjacent to Pittsburgh. It is charged that the discrimination already existing will be increased if the proposed tariffs are permitted to become effective. A witness for the carriers expressed the opinion that very little grain is reconsigned at central freight association points without being unloaded, but this is contrary to the testimony of the traffic manager of the Indianapolis Board of Trade. The amount of the traffic, of course, would not be determinative of the question of discrimination, and this is not contended by the carriers.

No change is proposed in the rules for the reconsignment of grain at Chicago, but as to hay, straw, feed, seeds, and grain screenings the changes proposed are similar to those at Pittsburgh, involving an increase in most of the charges, coupled with penalty charges on delayed reconsignments and further limitation of time. At present the charge for the reconsignment of hay from team or delivery tracks to points within the switching limits of Chicago is \$2 per car, and to points beyond \$5, without time limitation. The proposed rules provide a charge of \$2 for reconsignments of hay within 24 hours to any point; after 24 hours, \$5. The present charges of the eastern lines for reconsigning straw at Chicago are the same as for reconsigning hay; the western roads, however, charge \$2 per car for reconsigning straw to any point. It is proposed by both groups of carriers to charge local switching rates to points within switching limits and \$5 per car for reconsignment to points beyond, these being substantially the charges fixed by the general rules already discussed. No charge is now made by the western roads for the reconsignment of feed, screenings, or seeds at Chicago, and this is the rule of the eastern roads as to reconsignments within switching limits; for reconsignment beyond they charge \$2. It is proposed by all the carriers to charge \$2 for reconsignments to points within switching limits if made within 24 hours and \$5 per car after 24 hours. The charge to points beyond is fixed at \$5, regardless of time. These provisions are substantially those of general rules 6 and 8.

The reason for the proposed difference in treatment of hay and straw is not explained. This is true also of the numerous other variations from uniformity as between the various commodities and the eastern and western groups of roads serving Chicago.

Still greater variety is found in the rules proposed for application at St. Louis. The general condition as to reconsigning regulations at the latter point, present and proposed, will be better understood by referring to the annexed table.

Present and proposed rules applicable at St. Louis, Mo., and East St. Louis, Ill., to the reconsignment of carload shipments of grain and hay which have not been placed for unloading.

1. 2.

	When reconsigned to deliveries within St. Louis-East St. Louis switching districts.						When reconsigned to points outside of St. Louis-East St. Louis switching districts.					
	Before arrival.		Within 24 hours.		Within 48 hours.		Before arrival.		Within 24 hours.		Within 48 hours.	
	Grain.	Hay.	Grain.	Hay.	Grain.	Hay.	Grain.	Hay.	Grain.	Hay.	Grain.	Hay.
B. & O. S. W.:												
Present.....	Free.	Free.	Free.	Free.	Free.	Free.	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Proposed.....	Free.	Free.	Free.	\$2.00	\$5.00	\$5.00	2.00	2.00	2.00	5.00	5.00	5.00
C. & A.:												
Present.....	Free.	Free.	Free.	Free.	2.00	2.00	Free.	Free.	Free.	2.00	2.00	2.00
Proposed.....	Free.	Free.	Free.	Free.	2.00	2.00	Free.	Free.	Free.	2.00	2.00	2.00
C., B. & Q.:												
Present.....	Free.	Free.	Free.	Free.	2.00	2.00	Free.	Free.	2.00	2.00	2.00	2.00
Proposed.....	Free.	Free.	Free.	Free.	2.00	2.00	Free.	Free.	2.00	2.00	2.00	2.00
C., P. & St. L.:												
Present.....	Free.	Free.	Free.	Free.	2.00	2.00	Free.	Free.	Free.	2.00	2.00	2.00
Proposed.....	Free.	Free.	Free.	Free.	2.00	2.00	Free.	Free.	Free.	2.00	2.00	2.00
C., R. I. & P.:												
Present.....	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	2.00	2.00	2.00	2.00
Proposed.....	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	2.00	2.00	2.00	2.00
C., C., C. & St. L.:												
Present.....	Free.	\$2.00	Free.	2.00	2.00	2.00	Free.	2.00	Free.	2.00	2.00	2.00
Proposed.....	Free.	Free.	\$2.00	2.00	5.00	5.00	Free.	2.00	Free.	5.00	5.00	5.00
I. C.:												
Present.....	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.
Proposed.....	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.
M., K. & T.:												
Present.....	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.
Proposed.....	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.
Mo. Pac.:												
Present.....	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.
Proposed.....	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.
P., C., C. & St. L.:												
Present.....	Free.	Free.	Free.	2.00	2.00	2.00	Free.	2.00	Free.	2.00	2.00	2.00
Proposed.....	Free.	Free.	Free.	2.00	5.00	5.00	Free.	2.00	Free.	5.00	5.00	5.00
St. L.-S. F.:												
Present.....	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	2.00	2.00	2.00	2.00
Proposed.....	Free.	Free.	Free.	Free.	Free.	Free.	Free.	Free.	2.00	2.00	2.00	2.00

'Tariff reads "Immediately."

'Shown as switching charge.

'No time limit shown.

*Present and proposed rules applicable at St. Louis, Mo., and East St. Louis, Ill., to the reconsignment of carload shipments of grain and hay which have not been placed for unloading—Continued.*

	When reconsigned to deliveries within St. Louis-East St. Louis switching districts.						When reconsigned to points outside of St. Louis-East St. Louis switching districts.					
	Before arrival.		Within 24 hours.		Within 48 hours.		Before arrival.		Within 24 hours.		Within 48 hours.	
	Grain.	Hay.	Grain.	Hay.	Grain.	Hay.	Grain.	Hay.	Grain.	Hay.	Grain.	Hay.
T., St. L. & W.:												
Present.....	Free.	Free.	Free.	Free.	\$2.00	\$2.00	Free.	Free.	Free.	Free.	\$2.00	\$2.00
Proposed.....	Free.	Free.	\$2.00	\$2.00	5.00	5.00	\$2.00	\$2.00	\$5.00	\$5.00	5.00	5.00
Wabash:												
Present.....	Free.	Free.	Free.	Free.	Free.	2.00	Free.	2.00	1 2.00	2.00	1 2.00	2.00
Proposed.....	Free.	Free.	Free.	2.00	Free.	5.00	Free.	2.00	1 2.00	5.00	1 2.00	5.00

1 Shown as switching charge.

The Chicago and St. Louis protestants, like those at Pittsburgh, stress the necessity of inspection as an argument against any increase in charges or limitation of time for reconsignments of hay, straw, screenings, or seeds. The attitude which we take toward this contention has already been indicated. Inspection is a necessary and valuable commercial adjunct of the marketing of commodities, and the stoppage and necessary detention of shipments for the purpose is a reasonable and proper service. However, we can not hold that the carriers must perform this service without adequate compensation. It is contended by protestants that the service is already compensated by the freight rates. Inspection of grain has been general for many years and the transit services of various kinds in connection with that traffic have been urged by the carriers in defending their rates on grain. There is evidence that inspection of hay, straw, screenings, and seeds has also been long practiced in the large markets, but there is nothing to indicate the proportion of the total traffic receiving the service either at present or in the past, or to overcome the evidence of the carriers that the service has had no material influence in fixing the freight rates. We are not convinced that the carriers should except these commodities from the application of the uniform rules. A witness for the Pittsburgh protestants testified that at that point a very large proportion of the hay is ordered out within five hours after inspection and that very few cars are held over to the second day.

St. Louis protestants assert that the proposed rules would result in undue discrimination between shippers of grain and shippers of hay and feed; that they provide a more liberal allowance of time for reconsignment at Chicago than at East St. Louis; and that the rules proposed for application at Kansas City, in connection with the absorption of charges at that point, would increase an existing discrimination against St. Louis.

In so far as the charges proposed for reconsignment of these excepted commodities are equal to or lower than those which we have approved in considering the general rules, they are not found to be unreasonable. The facts of record show, however, that those charges are not uniform nor consistent, and that in certain instances they would result in unjust discrimination. With respect to these commodities the tariffs fail to give shippers, wherever located, and the traffic which they offer for transportation that similarity of treatment which a substantially similar service requires. Opportunity should be taken to secure a greater degree of uniformity than is proposed in the suspended tariffs. The proposed charges are therefore not approved.



In dealing with the general readjustment of rules here proposed, consideration has been given chiefly to the controlling principles, and it is not unlikely that experience will show the desirability or necessity of further changes. The suspended tariffs will be ordered canceled, but respondents may file schedules not inconsistent with the conclusions herein reached on not less than five days' notice.

ATTCHISON, *Commissioner*:

While concurring generally in the report herein, I dissent as to the finding that the carriers have justified the proposed universal charge of \$2 per car for diversion or reconsignment in transit prior to the arrival of the shipments at original destination, except as to certain specified perishable commodities.

As stated in the report, the effect of the proposed rules is a substantial increase in charges for a great majority of the reconsignments as now performed, especially in the west. It seems clear to me that the practice of permitting the diversion in transit of certain important commodities, such as lumber, must be taken as a necessary incident to the traffic as actually transported, which is in the public interest, alike of advantage to carriers and shippers. This privilege is often required because of delayed and irregular service in the supply and movement of cars, and affords a certain relief in times of car shortage or traffic congestion. Taken upon the whole the privilege is of great value both to the carrier and to the shipper, and any slight added cost to the carrier is offset by savings resulting from the more fluid movement of traffic, which can only be accomplished by the shipper's consent to a variance from the original contract of carriage. From the nature and history of the general rate structure, this privilege must in many cases have been deemed to be an incident to transportation in the contemplation of the carriers, taken into account when the rates for movement were fixed; and the existence of the privilege of free diversion has been a continual defense as against attempts to force open new routes of traffic.

The principles which are relied upon in the report to justify this charge would also seem to leave the way open for the carriers to impose a charge for the privilege of diversion or reconsignment in transit of the excepted perishables, even if the carriers have not seen fit to attempt such an advance at this time.

47 I. C. C.

## THE NEW YORK HARBOR CASE.

No. 8994.

### COMMITTEE ON WAYS AND MEANS TO PROSECUTE THE CASE OF ALLEGED RAILROAD RATE AND SERV- ICE DISCRIMINATION AT THE PORT OF NEW YORK ET AL.

v.

### BALTIMORE & OHIO RAILROAD COMPANY ET AL.

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*Submitted June 25, 1917. Decided December 17, 1917.*

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1. In constructing their class rates and most of their commodity rates between points in the west and Atlantic seaboard territory the defendants have divided the eastern part of the country into several large rate groups, one of which, known as the New York group, includes most of the northern part of the state of New Jersey, the city of New York, and points along the Hudson River almost as far north as Albany, N. Y. The principal allegation of the complaint is that the transportation of commodities to and from Manhattan and Brooklyn involves an expensive lighterage and floatage service not performed on traffic to and from points in the northern part of the state of New Jersey; that in view of the more favorable location of the latter points the rates between points in the west and Jersey City, Hoboken, Newark, Paterson, and other cities in northern New Jersey should be lower than the rates to and from Manhattan and Brooklyn; and that the defendants' policy of embracing all of these points in the same zone, and their consequent failure to recognize in the rate structure the cost of the lighterage and floatage service, subjects the people and the communities of northern New Jersey to undue prejudice and disadvantage, and operates to the undue preference and advantage of Manhattan and Brooklyn. It is also alleged that the rates between points in the west and points in the northern part of the state of New Jersey are unreasonable *per se*; *Held*, for reasons fully stated in the report, that the rates attacked are not shown to be unreasonable or otherwise unlawful.
2. The difference in transportation conditions justifies the allowance of more free time in the aggregate on shipments to Manhattan and Brooklyn than on shipments to points in the state of New Jersey. The question as to the amount of free time which should properly be allowed for holding on the New Jersey shore cars billed to "New York lighterage" has been determined in another proceeding, *New York Harbor Storage*, 47 I. C. C., 141.
3. Shipments arriving at holding yards on the New Jersey shore billed to "New York lighterage" and later ordered by the shipper or consignee to a specified destination within the lighterage limits may be forwarded for \$2 per car, whereas cars reconsigned from Jersey City to points in 47 I. C. C.

New Jersey are subject to the usual reconsignment charge of \$5 per car; *Held*, That the difference in transportation conditions justifies the difference in charges.

4. The allegation that the defendants subject northern New Jersey to undue prejudice by maintaining a superior freight service from Manhattan is not supported by the evidence.
5. The establishment of reciprocal switching arrangements on westbound traffic at Jersey City, Hoboken, and Weehawken would have the effect of short-hauling the carrier originating the traffic, and such a requirement by order of the Commission would therefore be contrary to the fifteenth section of the act to regulate commerce. Prayer for the establishment of interterminal switching arrangements for the interchange of east-bound carload traffic denied. Complaint dismissed.

*George L. Record, Robert H. McCarter, Frank Sommer, and John R. Walker* for complainants and New Jersey State Chamber of Commerce and Staten Island Chamber of Commerce, interveners.

*George Stuart Patterson, Jackson E. Reynolds, Clyde Brown, J. L. Seager, T. H. Burgess, R. W. Barrett, and C. R. Webber* as a committee for defendants generally.

*William Ainsworth Parker* and *C. R. Webber* for Baltimore & Ohio Railroad Company; *Jackson E. Reynolds* for Central Railroad Company of New Jersey; *H. A. Taylor* for Erie Railroad Company; *Clyde Brown, O. E. Butterfield, and Parker McCollester* for New York Central Railroad Company and allied companies; and *Raymond F. Waterhouse* for New York, Ontario & Western Railway Company, defendants.

*Julius Henry Cohen* and *Frank de R. Storey* for state of New York, Chamber of Commerce of the state of New York, Merchants' Association of New York, and a number of other trade bodies; *Lamar Hardy* and *George W. Wickersham* for the city of New York; *Malcolm Lloyd, jr.*, for Philadelphia Board of Trade; *Allen S. Olmsted, 2d, William A. Glasgow, jr., and Robert D. Jenks* for Commercial Exchange of Philadelphia; *R. E. Lee Marshall, Herbert Sheridan, and John B. Daish* for Baltimore Chamber of Commerce; *H. Findlay French* and *John B. Daish* for Board of Trade of Baltimore; *Albert C. Ritchie* for state of Maryland; *S. S. Field* for city of Baltimore; *Oliver C. Semple, George S. Coleman, and Robert T. Donahue* for Public Service Commission of New York, First District; and *H. O. Barlow* for Freight Traffic Committee, Chicago Association of Commerce, interveners.

*R. D. Rynder* and *A. C. Owen* for Swift & Company; *Samuel P. Goldman* for Real Estate Board of New York; *W. N. Taylor* and *Richard R. Costello* for Maritime Association of the Port of New York; *William H. Hickin* for Brookhaven Improvement Association, Incorporated; *Herbert A. Knox* and *Joseph A. Hall* for Bronx Board of Trade; *Richard S. Newcombe* for borough of Queens;

*W. H. Chandler* for Boston Chamber of Commerce; *Bruce M. Falconer* for Fifth Avenue Association of the city of New York; *Benjamin L. Fairchild* and *J. C. Lincoln* for Merchants Association of New York and others; *William C. Ridgway* for Paper Association of New York City; *E. W. Estes* for Broadway Association; *Nelson Gray* for New York wholesale grocers; *L. R. Eastman, jr.*, for Dried Fruit Association of New York; *L. M. Gaylor* for Wholesale Shoe League; *Joseph E. Kean* for Central Mercantile Association; *C. W. Nash* for Albany Chamber of Commerce; *W. Fred Silleck* for Erie Basin Board of Trade; *H. B. Cole* for Prudential Oil Corporation; *A. E. Beck* for Merchants & Manufacturers Association of Baltimore; *N. B. Kelly* for Philadelphia Chamber of Commerce; *Edmond E. Wise* for Retail Dry Goods Association of New York City; *Cyrus C. Miller* for Advisory Council of Real Estate Interests of New York City; *Frank Harvey Field* and *George W. Darling* for Manufacturers' & Business Men's Association; *Chas. J. Austin* for New York Produce Exchange; *William Liebermann* for Brooklyn Coal Exchange and Brooklyn Civic Club; *Francis F. Leman* for Staten Island Civic League; *George H. Tower* for Standard Oil Company of New Jersey; *Maurice J. Moore* for Real Estate Association of the state of New York and Brooklyn Board of Real Estate Brokers; *Harry B. Chambers* for Taxpayers' Alliance of the borough of the Bronx; *E. H. Best*, *E. W. Hoover*, and *Walter I. Willis* for Chamber of Commerce of the borough of Queens; *Charles F. MacLean* for New York Board of Trade and Transportation and New York State Waterways Association; and *Frank L. Neall* for various Philadelphia commercial interests, interveners.

#### REPORT OF THE COMMISSION.

##### HARLAN, *Commissioner*:

What follows is the report as proposed by the attorney-examiner who heard the evidence in this proceeding, with such changes, however, as seemed to be required, in the light of the exceptions to the report and the argument thereon, to give full expression to the conclusions reached by the Commission upon the facts disclosed of record.

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It is maintained by some experts on harbor development that no port is to be regarded as ideal unless its facilities are so arranged as to provide for the direct and economical interchange of freight between the rail carriers and the boat lines serving it. There should be spacious piers on the water front adjacent to the terminals of the rail lines; the railroad tracks should extend onto the piers; and freight should be transferred directly between the cars and the vessels.

If this principle is sound, the very statement of it constitutes a serious indictment of the prevailing conditions at the port of New York, since the terminals of nearly all the trunk lines at that port are on the New Jersey shore, while most of the ocean lines have their piers either on Manhattan Island or at South Brooklyn, distant from 1 mile to 4 miles from the rail terminals. To a specialist in port development it is "a surprising fact that not a single steamship pier on Manhattan Island has a railroad track on it connected to a trunk line railroad, or even to a switching railroad by which the trunk lines might be reached." With a few exceptions there are no facilities on the New Jersey shore for the accommodation of large vessels, which are accordingly obliged to find pier space elsewhere in the harbor. In the absence of bridges or freight tunnels connecting the New Jersey shore with Manhattan and Brooklyn, the problem of providing facilities for the transfer of freight between the cars and the vessels is solved by the use of lighters and car floats, which are also employed in transferring freight between the railroad terminals and the piers in other parts of the harbor. The conditions under which freight is transported from one side of the harbor to the other at New York are without an exact parallel anywhere in this country. In *Lighterage and Storage Regulations at New York*, 35 I. C. C., 47, we observed that "the water areas intersecting and adjoining New York City and the crowded condition of Manhattan Island have resulted in the adoption by the carriers of forms of terminal service peculiar to that city," and that "many of the circumstances and conditions which affect the transportation service at New York have no counterpart in the United States."

In spite of the heavy expense incurred by the carriers in lightering and floating freight from one side of the harbor to the other, and in spite of the fact that no corresponding service, except as hereinafter indicated, is performed on traffic consigned to or from points in New Jersey, the rates for the transportation of freight between points in the west and Jersey City, Hoboken, Weehawken, Newark, Paterson, and certain other points in the same state, have been for many years the same as the rates between western points and New York and Brooklyn. The complainants contend that the rates to and from the New Jersey points should be lower than those to and from New York and Brooklyn, and that the defendants' failure to recognize the additional cost of the lighterage and floatage in constructing their rates to and from New York subjects the cities of northern New Jersey to undue prejudice and disadvantage and their people to the payment of unreasonable rates, and that an undue advantage is thereby conferred upon New York and Brooklyn and the people and industries there located. Since the hearing there has been a difference of opinion as to the exact nature and scope of the



complainants' demands. In their petition they ask, in effect, that the rates to and from points in northern New Jersey be made lower than the rates to and from New York and Brooklyn by the amount of the lighterage cost. Since the rates from western points to Philadelphia are only 2 cents under the rates to New York, and since the cost of lighterage is considerably in excess of 2 cents per 100 pounds, it is clear that to construct the rates on the basis suggested in the petition would bring them below the Philadelphia basis. At the opening of the hearing the examiner stated the issues, after which counsel for the complainants read into the record a prepared statement outlining the complainants' position, in the course of which he said:

It is our judgment that if New Jersey is put substantially upon the Philadelphia basis in the matter of rates it will result in a development of the New Jersey territory in a way that will be of great advantage to the port of New York as a whole.

In the brief of exceptions filed by the complainants we are advised that this statement was not intended as a specific indication of the complainants' demands, but that "counsel was simply expressing the view that the complainants would not expect a reduction to the full extent of such (lighterage) cost, but merely intended to place a limitation upon the complainants' demands, that the spread between the north Jersey rates and the New York rates might be limited to 2 cents per 100 pounds, rather than be made the difference of the full amount of the cost of lighterage." It will be seen that a reduction of 2 cents in the rates to northern New Jersey would place them exactly on the Philadelphia basis. Whatever may have been the complainants' object in making this definite statement, it was accepted by the other parties, and properly so, as the issue to which they should address their evidence, and the hearing proceeded with that understanding. It is the view of the Commission that the issues should be clearly stated and definitely determined not later than the opening of the hearing. With that end in view it has instructed its examiners to state the issues when the case is called for hearing, and to request the parties to agree at that time as to the matters specifically presented for determination. This plan was adopted for the purpose of avoiding such situations as that here arising, and because it was found that no procedure could be successful, or result in substantial fairness to all parties, which permitted a complainant to shift his position after the evidence was submitted. In their brief the complainants define their position as follows:

The specific relief sought by the complainants is the creation of a New Jersey rate zone, which, starting with the termini of the trunk line carriers along the Jersey shore of the Hudson River, will embrace all intermediate main-line points now located in that portion of New Jersey included within the New York

47 I. C. C.



rate zone, and the establishment of a spread of at least 2 cents per hundred pounds in the rates to and from this New Jersey zone, from and to points west thereof, as compared with the rates to and from New York, to and from the same points.

Although the complainants here seem to have in mind the creation of a distinct rate zone embracing only northern New Jersey, it will be observed that to reduce New Jersey's rates by 2 cents per 100 pounds would have the effect of extending the Philadelphia rate group to the Hudson River, and of transferring northern New Jersey from the New York group to the Philadelphia group. It is true that the spread desired by the complainants could be effected by increasing the New York rates, but not without disturbing the port differential relationship, a matter to be discussed in detail later in the report.

The complainants take the position that the inadequacy of the present facilities at the port of New York and the consequent congestion of freight there are attributable at least in part to the application of a common rate of freight to and from points bordering on the harbor. As long as the railroads perform the expensive lighterage and floatage service without imposing an additional charge therefor, the freight rates offer no inducement to the steamship companies to seek pier space on the New Jersey shore rather than in Manhattan or Brooklyn; and the maintenance of a common rate to and from both sides of the port tends to increase rather than to diminish the congestion of freight on the shores of Manhattan and Brooklyn. If the freight rates to and from the New Jersey shore were lower, ocean shipping would be attracted to the New Jersey side of the harbor and more industries would be induced to locate there. The complainants contend that this result would be desirable, not only because it would relieve the congestion at the port, an ever-present problem, but because it would enable the defendants to avoid the great expense they now incur in performing a transfer service which the complainants deem unnecessary. There is some disagreement among the witnesses as to whether or not the present practice of handling freight in lighters is wasteful, nor are they in accord as to the relative advantages and disadvantages of loading and unloading freight directly between piers and vessels on the one hand and lightering it on the other. It seems to be agreed that solid trainloads of some commodities may be loaded and unloaded most economically and expeditiously if facilities are provided for the direct interchange of freight between car and vessel, and that lighters may be employed to better advantage when the cargo is of a miscellaneous character. The vessels entering and leaving New York harbor usually carry miscellaneous freight. In loading a miscellaneous cargo directly from cars to vessel it is important to have the cars shunted onto the pier in the exact order required for the proper

loading of the vessel, and if they do not arrive in the proper order confusion and delay result. Lighters, on the other hand; may arrive in any order, and those not needed immediately can be conveniently placed to one side while others are unloading. Moreover, a lighter may contain from 600 to 1,000 tons of freight, from 20 to 30 times as much as the average car. Perhaps the most efficient method is the one employed at the piers of some of the private terminal companies, where a vessel can take its cargo from cars and lighters at the same time; and if the necessary accommodations for ocean-going vessels were provided on the New Jersey shore near the railroad terminals, this method of interchange could be employed to better advantage there than in any other part of the harbor.

The complainants call attention to the fact that approximately 50 per cent of the country's total export and import traffic passes through the port of New York. It is estimated that 10,000,000 tons of freight annually would be affected by a change in the rates here in issue, and that of the total tonnage coming to the New Jersey shore from the west, from 85 to 90 per cent is carried in lighters or on car floats to the east side of the harbor. If it be true that an expensive and unnecessary lighterage service is performed on such an enormous tonnage, it is obvious that the present method of handling freight at the port involves a huge economic loss which is in a sense an unjustifiable burden upon the people of the whole country. The complainants also insist that the defendants' policy of transferring freight across the harbor without imposing a higher rate for that service encourages the continuation of the wasteful practices which have long prevailed, and they contend that the establishment of lower rates to and from the New Jersey side of the port would not only accord to the people of New Jersey an advantage to which their favorable location entitles them but would relieve the people of the whole country of an unnecessary burden which is directly attributable to the present rate adjustment. The various benefits which would accrue to practically all parties in interest if lower freight rates were published to and from the New Jersey shore are enumerated as follows by the complainants:

New York will gain from the relieving of the existing congestion which will be made possible by the transfer of steamers to the New Jersey shore, leaving room for the expansion of the railroad facilities for lighterage service. It will gain from its share of the increased export and import business which will come to the port. It will gain in the collateral advantages that come to New York from the growth of the New Jersey suburban section.

The railroads will gain in the saving of the excess cost over the revenue which they lose in lightering goods to New York and back again to the extent that this business would be done on the New Jersey side. They would gain in the increased export and import business that would come to the port.

The main trunk lines would gain by obtaining business which now goes to the west by our coastwise steamers.

New Jersey would gain from the increased business that would come to New Jersey from New York, and in the increased business that would be attracted to this port.

The whole country would gain in being saved the needless tax upon commerce which is involved in the existence of the present free lighterage practice.

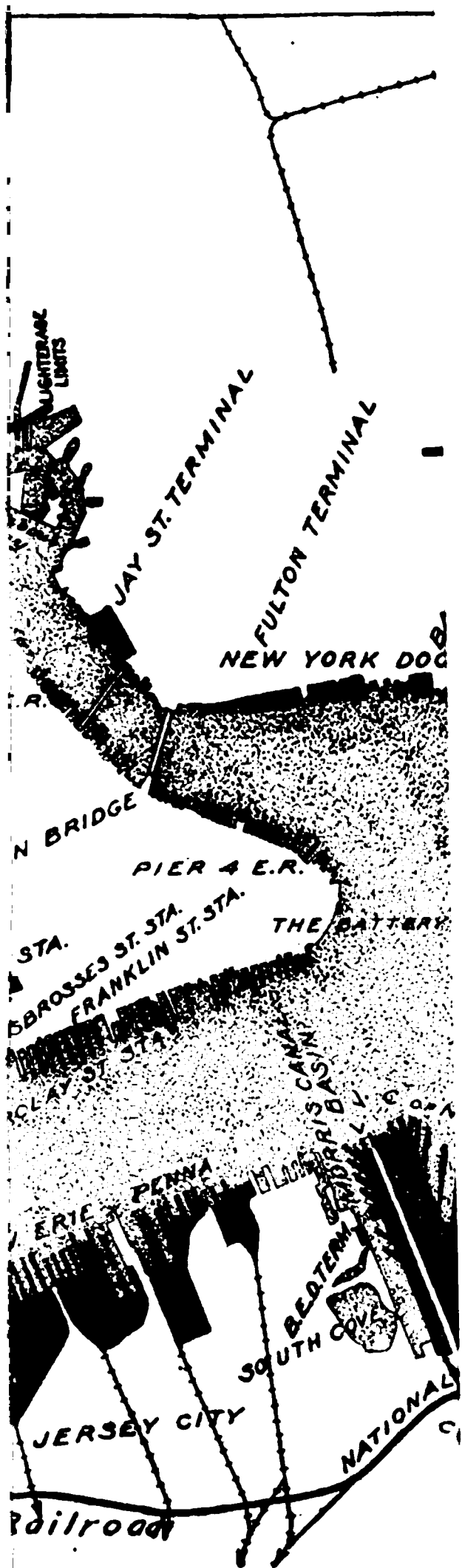
#### DESCRIPTION OF THE PORT OF NEW YORK.

The center of industrial, commercial, and maritime activities at the port of New York is the lower portion of the island of Manhattan. Bounded on the west by the Hudson River and on the east by the East River, both of which will accommodate the largest vessels, and with its southern end protruding almost into the waters of New York Bay, Manhattan Island has all the advantages which excellent facilities for transportation by water can afford. The accompanying map will be found helpful in studying the situation.

All along the west side of the island, from "the Battery" to the freight terminals of the New York Central Railroad at Sixtieth street, are piers for the accommodation of ocean vessels and the floating equipment of the various rail lines serving the port. Numerous steamship lines whose vessels are engaged in foreign and coastwise trade have pier space on the west side of the island; and here, too, are the railroad pier stations of the principal trunk lines, whose lighters and car floats are almost constantly engaged in transferring freight between these stations and the railroad terminals on the New Jersey side of the harbor.

On the west side of the Hudson River, directly opposite Manhattan Island, are the terminals of the trunk lines reaching the port of New York from the north and west. With a few exceptions to be noted later practically all of this portion of the New Jersey shore from Guttenburg to Constable Hook is owned by the railroads and used for railroad purposes. At Weehawken are the freight and passenger terminals of the West Shore Railroad Company and a number of piers owned by that company. A short distance to the south are the terminals of the Erie Railroad Company and the piers, stations, and warehouses owned by that carrier. South of the Erie terminal, in the city of Hoboken, are the piers of the Scandinavian-American line, the Holland-American line, the North German Lloyd, and the Hamburg-American line.

Immediately to the south of these steamship piers are terminals of the Delaware, Lackawanna & Western Railroad Company, the Erie Railroad Company, and the Pennsylvania Railroad Company, the two latter terminals being located in Jersey City, opposite the southern end of Manhattan Island. A short distance to the south





of the Pennsylvania terminals is the Morris Canal Basin, adjoining which, in Communipaw, are the terminals of the Lehigh Valley Railroad Company and the Central Railroad Company of New Jersey. Still farther to the south are the "Black Tom" terminal of the Lehigh Valley Railroad and the Greenville terminal of the Pennsylvania Railroad. The terminal of the Baltimore & Ohio Railroad is on Staten Island, opposite Constable Hook.

It is unnecessary to give a detailed description of the Brooklyn shore front. It suffices for the purposes of this report to observe that the larger private terminal companies which act as the agents of the trunk line railroads in transferring freight across the harbor have their terminals on the Brooklyn shore. The most northerly of these is the Brooklyn Eastern District Terminal, located on the East River north of Wallabout Bay. To the south is the Jay Street Terminal, and just south of the Brooklyn bridge are the extensive terminals of the New York Dock Company. The Bush Terminal Company has its terminals between Gowanus Bay and Bay Ridge. The Brooklyn Eastern District Terminal has a small terminal at the foot of Warren street, Jersey City, adjacent to a refinery of the American Sugar Refining Company, but that terminal is not connected with the rails of any of the trunk lines and is not generally used by Jersey City shippers.

The following railroads reaching the port of New York from the west and north have their terminals on the New Jersey side of the harbor: Central Railroad of New Jersey; Delaware, Lackawanna & Western Railroad; Erie Railroad; Lehigh Valley Railroad; New York, Ontario & Western Railway; Pennsylvania Railroad; Philadelphia & Reading Railway; and West Shore Railroad. The only lines reaching New York from the north and west with their own rails are the New York Central Railroad, whose principal terminals are on the west side of Manhattan Island, and the Baltimore & Ohio Railroad, which has a freight terminal on Staten Island. The names of all the lines serving New York, together with the number of miles of railroad operated by each, are shown in Appendix A.

There are 91 steamship lines engaged in the foreign trade sailing from Manhattan, Brooklyn, and Staten Island. Only nine sail from the New Jersey side of the harbor, and three of these, the North German Lloyd and two of the Hamburg-American lines, have suspended their sailings because of the war. In addition to the lines engaged in the trans-Atlantic service there are 15 lines plying between New York harbor and points on Long Island Sound, all of them sailing from the New York side of the harbor. Appendix B shows the number of lines sailing from both sides of the port, and the foreign ports which they serve.



**"FAULTY ORGANIZATION" AT THE PORT OF NEW YORK.<sup>1</sup>**

Calvin Tompkins, former dock commissioner of the city of New York, called by the complainants as a nonpartisan witness, gave an interesting exposition of his views as to the problems confronting the dock department, and of the steps which, in his judgment, should be taken to solve them. In his opinion, "it is necessary, at the start, to appreciate the relationship which exists between lighterage and faulty port organization." Lighterage and floatage are necessary because of the "faulty organization." New York is the only port in the world where a very large volume of freight is lightered or floated between trunk line terminals on one side of the harbor and ships and factories on the other side. Because of Manhattan's "insular disability" it is necessary to transfer freight to and from the island. In Mr. Tompkins' judgment, however, much of the expense of lighterage is unnecessary and could be avoided by reorganizing the

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<sup>1</sup>The complainants contend that the whole organization of the port is fundamentally wrong. To quote from the complaint:

"Under the unscientific and uneconomic methods practiced by the carriers, and before referred to, the business of the port of New York has been developed along wholly artificial in lieu of natural lines. The result is that the city of New York has become so congested with traffic, and the price of land, owing to this artificially created demand, has risen so high, that the expense of conducting business on Manhattan Island has become excessive. High rents, high taxes, high insurance rates, congestion of the streets, congestion at the pier stations and shipping yards of the railroads, the wasteful methods in handling and rehandling all foodstuffs consumed, the value of which is estimated at more than \$700,000,000 per annum, with the consequent heavy cost of drayage, estimated at \$50,000,000 per annum, the loss to the railroads themselves in carrying goods across the bay and back again, in some cases only for storage, are all a burdensome tax upon business conducted at this port, which can only be completely removed by the reorganization of the port as a whole, and utilizing the advantages of the New Jersey shore and navigable waterways near its great port.

"While the difficulties growing out of the European war have materially increased the congestion at the port, nevertheless the congestion and expense arising out of the conditions herein described have become a normal condition, and some remedy must soon be found if the natural advantages of the port are to be fully availed of.

"This condition also affects not only the port of New York, but practically the entire industrial situation in the United States, as the excessive cost of doing business at the port of New York under existing conditions, affects all of the industries of America whose products pass through or come to the port for distribution. The problem, therefore, is really a national one, and is not confined solely to a local situation. It involves the handling of many times the maximum amount of tonnage that is estimated will go through the Panama Canal.

"The importance of adequate facilities for transportation of troops and freight from the west or south to the east by means of intercommunication, which may be quickly and readily availed of, if necessary, without passing through the port, in the event of war, likewise mark the existing condition of congestion as a national rather than a local problem.

"This difficulty can not be cured by temporary arrangements or any expedients, such as temporarily shortening the time to shippers on the New York side in which to remove their goods. The only way that this difficulty can be solved permanently and in the interest of the whole country, is to so readjust and reorganize the port as between New York and New Jersey territory, as to put into intensive use all the natural conditions, and give to the New Jersey side advantages which nature has provided. Such a reorganization, on scientific lines, will remove the unjust burden now imposed upon New Jersey, will relieve very greatly the port congestion, and enable all business at this port to be conducted on the basis of the greatest possible economy, thereby saving to the carriers millions that are now being lost each year by reason of unscientific methods and the failure to provide adequate facilities."

port. He suggests, as the most important feature of the reorganization which he proposes, better means of communication between New York and New Jersey, particularly in the form of bridges and tunnels. He quotes with approval the contention of the Jersey City Chamber of Commerce that "free lighterage is in effect a federal subsidy to overcome the incompetence of New York by inhibiting New Jersey from taking full advantage of its natural opportunities." He thinks it unfortunate that such a large portion of the water front on both sides of the river is devoted to railroad uses, and believes that the trunk lines whose terminals are now located on the New Jersey side of the harbor should be induced to construct modern land terminals on the west side of Manhattan, a short distance from the river. If the classification yards on the New Jersey meadows were connected by freight tunnels with a union terminal in Manhattan, the present "dead end" terminals on the New Jersey shore could be abolished and the water front devoted, as it should be, to marine uses.

The difficulty of attaining a physical coordination of facilities at the port, and administering them as an organic whole, is attributable in part to the nature of the harbor and to the fact that the opposite sides of the port lie in different states. One of the peculiar features of the port is its division into separate units. Manhattan, as previously explained, is separated from other parts of the port by the Hudson River, the East River, and New York Bay. Staten Island, separated from Manhattan by the waters of the upper bay, presents peculiarly difficult problems to those who believe that the port can best be developed by coordinating its various parts and bringing them under a single administrative authority. Brooklyn, located on Long Island, is separated from New Jersey by the broad waters of the upper bay, and from Manhattan by the East River. That part of the port lying west of the Hudson River is in the state of New Jersey, and the fact that the port is thus divided into two parts by a state line can not be overlooked by those who would understand its history and the problem confronting those who are interested in its development.

The trunk line terminals now located on the west side of the port could not be transferred to the Manhattan side, as suggested by Mr. Tompkins, without seriously disturbing existing conditions. Mr. Tompkins admits that such a change could not be effected without "interfering with and injuring public and private interests." He concedes that the consequent injury would be very great, and that "there is a great deal of private property and of public property in New York that will virtually have to be scrapped as a consequence of any general system of port policy looking to the integration of the port." Moreover, the stronger trunk lines, whose large terminals now give them a decided advantage over their less fortunate competi-

tors, would doubtless oppose the plan suggested by Mr. Tompkins, because the railroad terminal in Manhattan which he proposes would be equally accessible to all the trunk lines.

Other private interests whose success depends in large measure upon the continuance of present conditions in the harbor would doubtless be opposed to any plans looking to a material disturbance of those conditions. At various points along the Manhattan shore are industries engaged in the buying and selling of ice, coal, sand, stone, and other commodities. Their proprietors occupy portions of the water front under leases from the city, and because of the great demand for locations along the shore, and the scarcity of suitable sites, these leases are of great value to the lessees; and it has been suggested that because of their great value, their public nature, and the virtual monopoly which they give to their holders, they are properly to be regarded as franchises. Mr. Tompkins insists that in spite of this opposition the city of New York should not be content to rest its claim to commercial supremacy solely upon the continuation of free lighterage, and that the plan which he advocates should ultimately be accepted, regardless of the inevitable injury to existing property values which its adoption would entail. The ports of Hamburg, Antwerp, Manchester, Montreal, New Orleans, and San Francisco have already adopted plans providing for the administration of all the facilities at each port as a unit, and it is Mr. Tompkins's judgment that New York must follow their example or surrender its preeminence. Upon cross-examination, however, he expressed the opinion that it would be inadvisable suddenly to abolish free lighterage, and that the present policy should be continued "long enough to enable New York to at least start, in cooperation with New Jersey, to integrate the port."

It may be appropriate at this point to observe that the New York Central Railroad Company proposes to spend approximately \$50,000,000 for new freight terminals on the west side of Manhattan as soon as it can obtain the city's consent to do so. Whether or not that consent should be given has been the subject of much discussion, and opinions have differed widely. The plans as originally drawn by the New York Central Railroad and by the dock department of the city of New York proposed that the new tracks should be extended along the marginal street paralleling the Hudson River, but under the present plan it is proposed to cut a right of way through the city blocks just east of the marginal street and south of Thirtieth street. The plans contemplate not only a reconstruction and relocation of the tracks, but the enlargement of piers and terminals, and other changes which will be referred to in somewhat greater detail later in this report. Mr. Tompkins is of the opinion that the city

blocks should be conserved for terminal and warehouse purposes and that the surrender of that valuable property by the city to the New York Central would constitute an insuperable impediment to his plan for the construction of a large union freight terminal on the west side of the island. The proposed plans have been tentatively approved by the port and terminal committee of the board of estimate and apportionment of the city of New York. We are advised upon oral argument that the legislature of the state of New York has recently taken the matter out of the hands of the city, with a view to determining independently the merit of the proposed improvement.

#### THE ADVANTAGES OF THE PORT OF NEW YORK.

It is but fair to observe that Mr. Tompkins represents a minority viewpoint; and he frankly concedes that when questions bearing upon the development of the port were considered by the Chamber of Commerce of the state of New York, his vote was often the only one cast in favor of the plans advocated by him. There are those who believe that Manhattan's insular position is by no means a disability; that its proximity to excellent waterways is of inestimable value to it; and that the waters of New York harbor permit a promptness and flexibility of terminal operation which are not attained at any other port.

A representative of the Merchants Association of New York pictured the waters surrounding Manhattan Island as "an interior belt line" employed in switching cars between the terminals of the trunk lines on the New Jersey shore and the industries, pier stations, and private terminals in various parts of the harbor. Unlike the cars on a belt line railroad or an industrial siding, the car floats and lighters plying in New York harbor are not restricted in their operation to a narrow roadbed or to the line of a particular carrier. They can readily transport freight to almost any point in the harbor or in the waters tributary thereto; and it may be said that an industry located, for example, at the Bush terminal in Brooklyn has convenient access to the terminals of all the trunk lines serving the port. By means of the car floats and lighters the industries along the water front can receive their raw materials over the lines of any of these rail carriers, and in shipping their finished products to the west they find nearly a dozen trunk lines ready to serve them. That this flexibility of terminal service is of great value to the shippers who are able to avail themselves of it can not be questioned; and the inconvenience which would result if it were not provided is attested by evidence submitted by the complainants to the effect that shippers located in Jersey City are decidedly handicapped because of the refusal of the trunk lines to provide reciprocal switch-

ing arrangements which would give the shippers there located access to the rails of more than one carrier. The defendants point out, however, that many shippers in northern New Jersey have the benefit of private sidings, whereas nearly all of the shippers in Manhattan and Brooklyn must dray their shipments to terminals on the shore front.

No other harbor on either seaboard of the United States rivals the harbor of New York in size. The port of New York has 921 miles<sup>1</sup> of water front, as compared with 141 at Boston, 120 at Baltimore, 37 at Philadelphia, 26 at Norfolk, 41½ at New Orleans, 8 at Galveston, 8 at San Francisco, and 113.9 at Seattle. The port of New York is peculiarly favored, also, in the area of its harbor, which is sufficiently large to permit the anchorage and maneuvering of large numbers of vessels; and in investigating the reasons for the preeminence of New York with respect to ocean traffic it is important to give consideration to the fact that the steamship companies whose piers are on Manhattan Island can dock their boats in close proximity to the very heart of the city, to its most important markets, to its largest mercantile establishments, and to its leading hotels; advantages which are not offered, and can not be offered, on the west side of the harbor. The fact that so many railroads and so many steamship lines serve the port is another great advantage. "Here are great ocean liners that touch every port in the world, steamers that sail to Africa, to Asia, to South America, along the coast, up the sound, through the Panama Canal, up the Hudson—railroads east, west, north, south, everywhere—in short, a veritable network of intercommunication with all the world, resembling a giant telephone switchboard."

#### THE ERIE CANAL, OLD AND NEW.

One of the leading advantages of the port of New York is its favorable location. As early as the first part of the eighteenth century, when the colonists began to explore the territory west of the Allegheny Mountains, it became apparent that the valleys of the Hudson and Mohawk rivers afforded the most convenient routes between the eastern seaboard and the west; and as the fertile regions in the vicinity of the great lakes were developed it was found not only that the lakes themselves could be conveniently used for the transportation of the products of the western fields, forests, and mines, but that the Mohawk and Hudson valleys constituted the only direct avenue of commerce which could be used in forwarding those

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<sup>1</sup> Measured along shore and around piers. The distance along the shore proper is said to be 771 miles.



products to the seaboard. All the traffic using this natural highway passed through the port of New York, which has been called "the seaboard portal of the best highway approach to the west."

Then, toward the end of the first quarter of the nineteenth century, the people of the state of New York realized the importance of constructing a canal to connect the great lakes and Lake Champlain with the navigable waters of the Hudson River. "The need of the hour was expansion, and, as subsidiary to it, communication." In vain the people of New York appealed to the federal government to assist in the construction of such a canal; in vain they called upon the people of neighboring states, including New Jersey, to share in the cost of the enterprise; and, failing of outside assistance, the state of New York, with a population of only 1,350,000, entered upon an undertaking the estimated cost of which was \$6,000,000.

The Erie Canal, opened in 1825, marked a new epoch in the history of transportation in this country. The advantages which it conferred upon the state of New York and the port of New York are strikingly portrayed by statistics showing the total exports and imports from and to certain states and certain ports before and after the construction of the canal. During the period 1791 to 1800 there was a close contest between the states of New York, Pennsylvania, Maryland, and Massachusetts for supremacy in the export trade. During that decade the total values of the exports from these states were as follows: New York, \$96,000,000; Pennsylvania, \$95,000,000; Maryland, \$80,000,000; Massachusetts, \$70,000,000. It will be observed that the states of New York and Pennsylvania were evenly matched, and that Maryland and Massachusetts were not far behind. Even before the construction of the Erie Canal, New York began to outdistance her competitors. For the decade 1811 to 1820 her exports were \$88,000,000; South Carolina was second with \$65,000,000; Louisiana and Georgia were nearly the same, with approximately \$50,000,000 each; and Virginia came next with \$45,700,000. The most significant figures are those for the two decades immediately following the completion of the Erie Canal. During that period the exports from the states of New York and Louisiana attained remarkable proportions. For the period 1831 to 1840 Louisiana was first with \$256,000,000, New York second with \$180,000,000, South Carolina third with \$101,000,000, and Georgia fourth with \$73,000,000. The following decade, 1841 to 1850, finds Louisiana and New York contesting for supremacy, with New York rapidly gaining. Louisiana was still first with \$329,000,000, New York second with \$302,000,000, South Carolina third with \$86,000,000, and Massachusetts fourth with \$76,000,000.



The most striking feature of these statistics is the marked contrast between the general situation in the last decade of the eighteenth century and that which prevailed in the middle of the nineteenth century. Just prior to the year 1800 four of the states on the Atlantic seaboard, New York, Pennsylvania, Maryland, and Massachusetts, led in the value of exports, and the difference between them was relatively small. By the middle of the last century, however, the routes of transportation afforded by the Mississippi River and by the Erie Canal and the waterways which it connects showed their influence with telling effect. For the decade 1841 to 1850, the exports from both New York and Louisiana exceeded \$300,000,000, and South Carolina, with \$86,000,000, was their nearest competitor.

Beginning with 1856 the export and import statistics are recorded for each port, rather than for each state. From that year to the present time the port of New York has occupied a position of unchallenged supremacy. The average annual value of the exports from the port of New York for the period beginning with 1861 and ending with 1870 was \$137,648,000. New Orleans was second with \$35,695,000, and Boston third with \$13,397,000.

An examination of the statistics showing the annual average value of both exports and imports also shows the port of New York to have been far in the lead as early as 1861. During the decade beginning in that year, the average annual value of New York's exports and imports was \$365,056,000, or 48.7 per cent of the total for the whole country. Boston was second with \$49,365,000, or 6.5 per cent of the total. During the next two decades, from 1870 to 1890, New York's exports and imports exceeded in value those of all the other ports of the country combined, and even at the present time more than half of the country's total imports and nearly half of its total exports pass through that port. The figures for the fiscal year 1914-15 are shown in the accompanying table:

*Value of exports and imports through principal ports of the United States for the fiscal year 1914-15.*

Port.	Value of imports.	Per cent of total for United States.	Value of exports.	Per cent of total for United States.
New York.....	\$985,695,792	55.3	\$1,029,063,713	40
New Orleans.....	84,564,012	4.7	201,606,560	7.8
Galveston.....	11,196,352	.6	243,079,784	9.5
Boston.....	106,284,880	5.9	86,585,429	3.3
Philadelphia.....	84,715,468	4.7	77,924,487	3
Baltimore.....	29,736,196	1.6	120,834,364	4

Additional statistics with respect to the value of exports and imports are shown in Appendix C.

The influence of the Erie Canal on the progress of the state of New York is further shown by other statistics to which brief reference may be made. Between 1820 and 1840 the population increased more than 75 per cent, and the number of persons engaged in manufacturing nearly trebled. Particularly significant is the fact that the cities along the route of the canal increased more rapidly in population than any other cities in the country. In the percentage of increase between 1820 and 1830 Rochester led all other cities of the United States with 421 per cent; Buffalo was second with 314; Syracuse third with 282; Utica fourth with 243; and Troy was surpassed only by Louisville, in the state of Kentucky, and Cincinnati, in the state of Ohio. A state of secondary rank in 1810, New York had become in 1840 preeminently the leading commercial state in the union.

The supremacy of New York in its facilities for communication with the interior is thought to have been the cause of its later supremacy in manufacturing. During the early part of the last century Philadelphia was the leading manufacturing city of the country, while New York "ranked below many American cities of less pretension." The advantage of cheap water transportation to and from New York soon proved attractive to manufacturers, however, and "gradually, almost inadvertently," New York became the foremost manufacturing city on the continent.

Reference has already been made to the remarkable increases in New York's exports and imports following the construction of the Erie Canal in 1825. The unusual success of the canal during the next few decades is undoubtedly attributable in part to the fact that at that time the railroads were still in their infancy. The first through rail line from New York to Chicago was opened in 1852 and it was not long before the competition between the rail routes and the water route was keen. A study of the all-rail class rates from New York to Chicago shows that as early as 1866 the railroads found it necessary to depress their rates during the season of open navigation to meet the canal competition. In January and February of the year 1871, for example, the first-class rate from New York to Chicago was \$1.80. Late in February it dropped to approximately \$1.50. During the spring and summer months it was approximately \$1, and at times even lower. During September, October, and November it fell to 30 cents, and in December it mounted to \$1.25. An examination of the rates during other years shows that these fluctuations occurred each year until 1878; and although they were so irregular as to indicate that other influences than water competition were at work, the fact that the rates usually reached their

lowest level between April and December, the season of open navigation on the canal and the lakes, shows that the water route was a factor with which the railroads had to reckon.

As early as 1865, however, it became apparent that the railroads were gaining rapidly in the volume of tonnage handled, and the statistics showing the gradual but certain prevalence of the rail lines over the water route are as interesting as the earlier figures which tell the story of the canal's success. In 1853 the New York Central Railroad carried 360,000 tons of freight, and the Erie Railroad 631,039 tons. In that year there were transported through the Erie and Champlain canals 4,247,853 tons, more than four times as much as the combined tonnage of the two great trunk lines. In 1868 the New York Central carried 1,846,599 tons, the Erie 3,908,243 tons, and the canals 6,442,225 tons. In the following year, 1869, the combined tonnage of the two railroads exceeded for the first time the tonnage passing through the two canals, the railroads' tonnage being 6,594,094 tons, as compared with 5,859,080 tons for the canals.

The water routes never regained the supremacy which they lost in 1869. In 1880 the two rail carriers handled 19,248,930 tons of freight, while the canals carried only 6,457,556 tons. In 1890 the two railroads carried 32,378,097 tons, as compared with a total of 5,246,102 tons moving through the canals. The story is continued in the following table:

*Separate tonnage of the New York Central Railroad, the Erie Railroad, and the Erie and Champlain canals.*

Year.	New York Central Railroad.	Erie Railroad.	Canals.
1892.....	20,721,752	18,334,716	4,281,996
1896.....	22,123,617	22,562,243	3,714,894
1900.....	37,586,496	26,501,104	3,345,941
1904.....	36,379,655	28,992,293	3,138,547
1908.....	41,980,236	32,800,498	3,061,877
1912.....	48,571,491	35,544,620	2,606,114
1915.....	64,287,881	35,267,739	1,858,114

The figures for each year beginning with 1853 and ending with 1916 are shown in Appendix D.

The dwindling figures in the last column have long been a matter of serious concern to the people of the state of New York. The statistics for the year 1915, for example, can be interpreted only to mean that the Erie Canal, at one time the principal avenue of commerce between the east and the west, is now a comparatively insignificant factor. Nor have the people of the state viewed without apprehension a decrease from 51.9 in 1873 to approximately 40 per cent in

1914 in the percentage which the value of exports from New York bears to the total for the whole country.

A number of years ago the people of New York, alarmed at the growing influence of the ports of Philadelphia and Baltimore, and determined to restore the Erie Canal to the position of prominence which it formerly enjoyed, began to consider the advisability of constructing a new canal much larger than the old one. In 1903, when the question was submitted by referendum to the voters of the state, it was decided to devote \$101,000,000 to the reconstruction of the Erie, Champlain, and Oswego canals and an additional sum of \$19,800,000 for canal barge terminals. In 1915 an additional sum of \$27,000,000 was similarly appropriated for the same purpose. It is said that the total cost of the new canal, including all the interest on the funded debt incurred in its construction, will be \$675,000,000.

The new canal, which is commonly known as the barge canal, is a colossal project in comparison with the original undertaking, the total first cost being approximately twenty times as great as the original cost of the Erie canal. Approximately 97 per cent of the work has already been completed. The barge canal is designed to accommodate 10,000,000 tons of traffic annually, approximately three times as much as the old canal carried in its most successful days. The docks are to be electrically operated, and modern barges, propelled by their own power, are to be substituted for the mule-drawn canal boats of the last century.

An important feature of the new project is the appropriation of \$19,800,000 for barge terminals at various points along the route. Thirteen of these, to cost \$9,740,000, are to be located in New York harbor, and three of them are already under construction. That those improvements will inure to the benefit of New Jersey if that state avails itself of their advantages is the opinion of the engineer employed by Jersey City to investigate the harbor situation. In his report to the city he says:

In addition to this over-sea business there is a large potential, but practically certain additional domestic trade that will be developed within the next few years upon the completion of the New York State Barge Canal. The state of New York will establish canal barge terminals at various points in the city of New York of course; but it can not compel all, or even the most of the vessels using the canal to either load or discharge cargo within the city or state limits if it is not convenient and desirable to shippers and vessel owners to do so. In a large sense the terminal of the barge canal may be considered to be the whole of New York Bay and its tributaries, and there is no reason why the cities of northern New Jersey, particularly Jersey City, could not gather the lion's share of this business without having contributed either directly or indirectly a penny of the enormous cost of the construction of the canal, provided the city offers sufficient inducements in the way of convenient and economical terminals to draw it.

## IMPROVEMENTS BY THE CITY OF NEW YORK.

The fact that New York City has lodged in a single department, known as the dock department, authority and control over its water front, has had a most beneficial influence on the progress and development of the port. As early as 1870 the city adopted a carefully planned program for the municipal ownership of its shore front and piers, and during the past 40 years a very large part of the water front has been acquired by the city, which now owns more than 20 per cent of its entire harbor frontage. Of the 104 miles of developed water front it owns 47 miles, or 45 per cent.

Nearly all the extremely valuable frontage on the west side of Manhattan Island is owned by the city. An exhibit filed by the city's dock commissioner indicates that 32 of the 54 railroad piers on the North River are municipally owned, and that of the 47 steamship piers on the west side of Manhattan only 3 are privately owned. A considerable portion of the East River water front also belongs to the city.<sup>1</sup>

The following table shows to what purposes the water front on the west side of Manhattan is devoted and what percentage is devoted to each, the figures given applying to that portion of the shore front which lies between pier No. 1, North River, at the extreme southern end of the island, and West Thirtieth street, a distance of 3.91 miles:

Nature of occupancy.	Percent- age of total.	Nature of occupancy.	Percent- age of total.
Trans-Atlantic steamships.....	17.5	Open wharfage.....	2.9
Coastwise steamships.....	24.3	Coal, ice, oysters, etc.....	6.9
Railroads.....	30.8	Recreation piers.....	.1
Hudson River steamers.....	3		
Long Island Sound steamers.....	5.7	Total.....	100
Ferries.....	7.8		

It has been the policy of the city to lease its shore front to railroad companies, steamship lines, and private concerns. There are approximately 516 leases and permits for the use and occupation of

<sup>1</sup> The progress made by the city recently in the development of its water front is attributable in no small measure to the fact that in 1898 "Greater New York" came into being. Prior to that time the city of New York embraced only Manhattan and the Bronx. In that year 40 cities, towns, and villages were consolidated into a single municipality. One important result of the merger was a very great increase in the borrowing capacity of the city, which has been able to make much greater expenditures for municipal improvements than it could otherwise have made. A remarkable increase in the population and general prosperity of the city seems also to have resulted from the consolidation. One index to the city's growth is the number of passengers carried annually on the electric lines within the city. In 1898 the number was slightly more than 600,000,000; in 1916 it was 1,890,000,000, an increase of more than one billion passengers. The significance of these figures is indicated by the fact that there were carried on all the steam railroads of the United States in 1916 only slightly more than one billion passengers.



wharf property and riparian rights owned by the municipality. Many of these leases are for long periods of time, but many of them provide for recapture or cancellation by the city at any time. Of 19 leases of piers on the North River to railroad companies, 8 will expire within 10 years, 5 more within 15 years, 5 more within 25 years, and 1 expires in 1955. In 1916 the city derived a total rental of \$4,426,270.71 from its leased piers and bulkheads. It should be stated, however, that the city owns 150 "open" piers, which are not leased for definite periods, but where wharfage is permitted at specified rates, as well as 130 bulkhead spaces which are available for use under temporary permits issued by the dock department.<sup>1</sup>

Since 1870 the city has spent \$43,062,162 for wharf property and \$71,515,826 for the construction of piers, bulkheads, and terminals. Other expenditures for repairs, maintenance, and administration bring the total to \$135,529,572.

The seriousness of the general terminal problem at the port of New York is due in no small measure to the fact that the most desirable water frontage is inadequate to accommodate all who apply for pier space. Both the railroad companies and the steamship lines regard the west side of Manhattan Island as the most suitable for their purposes, and, in spite of commendable results obtained by the dock department, it has been found necessary to induce some of the applicants to accept pier space in other parts of the harbor. Even prior to the enormous increase in the volume of export traffic which the trunk lines have recently been called upon to carry to the seaboard the congestion of freight at the terminals, on the piers, and in the streets of the city presented a problem which taxed the ingenuity of the carriers and the city authorities.<sup>2</sup>

It would be inadvisable to describe in detail the operation of the dock department or the constructive work which it is planning for the future development of the city's water front. The

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<sup>1</sup> The value of the property fronting on the North River is indicated by the rentals which the city of New York derives from its pier leases. Piers 14 and 15, with certain adjoining bulkhead space, were leased to the Brunswick Steamship Company at an annual rental of \$120,000 for the first 10 years and an annual rental of \$132,000 for the next 10 years. Piers 20 and 21, with the adjoining bulkhead, are leased to the Erie Railroad Company at an annual rental of \$132,000.

<sup>2</sup> The present dock commissioner describes the situation as follows:

"The necessity for dispatching the business within very limited periods of high congestion morning and evening, combined with the cramped conditions under which freight is handled over the piers and through the bulkhead sheds, has produced a condition which places a most serious burden upon the shippers of the city. West street and the marginal way are at times crowded with trucks to a point where it is impossible to reach the freight stations without intolerable and expensive delays. Testimony which appears entirely reliable has been taken by a number of commissions which have investigated the subject to the effect that several hours' delay in waiting for a chance to receive or deliver freight is no uncommon occurrence, and that the actual cost to the New York shipper of getting freight to and from the water-side stations is frequently equal to or in excess of rail service as far west as Buffalo."



present dock commissioner, who was called as a witness, thinks it "necessary to outline some adequate plan for relieving our commerce of disadvantages which rest upon it, due to the impossibility of providing a type of terminal organization which is readily obtainable in other places." To extend the piers to accommodate the largest ocean-going vessels; to widen the marginal street to relieve the congestion of trucks and other vehicles which cart freight to and from the piers; to provide suitable pier space on an already congested water front for the railroads, steamship companies, and other applicants; and, at the same time, to plan in a broad way for the future development of the port as a whole; these are the principal problems confronting the dock department at the present time.

One enterprise upon which the city is embarking is worthy of note—the construction of a marginal railroad in Brooklyn to be municipally owned and perhaps municipally operated. There has never been in any part of the harbor a general water front freight terminal owned and operated by the railroads jointly. They have been content to use their own private terminals and, when they proved inadequate, to employ the facilities of private auxiliary terminal companies. In the borough of Brooklyn, as previously stated, there are a number of such auxiliary terminal companies, the largest of which are the Brooklyn Eastern District Terminal, the Jay Street Terminal, the New York Dock Company, and the Bush Terminal Company. It will be observed from the map, *ante*, facing page 650, that these terminals are located on the Brooklyn shore between Newtown Creek and Bay Ridge. Between the Atlantic basin and Gowanus Canal there is a large section susceptible of commercial development, but at present almost entirely neglected. Just to the north of this section is another, where the terminals of the New York Dock Company are located, a territory served by "three disconnected fragments of a freight railroad"; and to the south is the property of the Bush Terminal Company.

The object of the proposed marginal railroad is to coordinate these disconnected facilities and to supply an adequate freight service to the whole section. The plans call for a double-track railroad extending from Bay Ridge to the Brooklyn bridge. A large classification and distributing yard is to be located at the Erie basin, where the state of New York has already acquired a site for the construction of one of the barge canal terminals previously discussed. It is not improbable that the various trunk lines reaching the port can be induced to operate this railroad jointly; but if not, the city itself plans to operate it, and in any event it will be constructed and owned by the city.

Reference should also be made to the New York Connecting Railroad, recently completed. The principal object of this road was to form a direct connection between the lines of the Pennsylvania system and those of the New York, New Haven & Hartford. The road extends from Bay Ridge, through Brooklyn and Queens, and across the East River to a point in the Bronx. It connects on Long Island with the Long Island Railroad, a part of the Pennsylvania system, and in the Bronx with the New Haven. Passenger traffic between New England and points in the south and west is now being handled over an all-rail route, and in the near future through freight will be interchanged by means of car floats operating between Greenville, N. J., and Bay Ridge.

#### LACK OF CENTRAL ADMINISTRATIVE CONTROL IN NEW JERSEY.

The inactivity of the municipalities and of the state authorities in New Jersey with respect to the improvement and development of the west side of the harbor is noticeable. The contrast between the notable progress of the city of New York, on the one hand, and the inaction of New Jersey on the other is striking.

This difference in policy is attributable primarily to a difference in conditions. For more than 40 years, as previously explained, New York's whole harbor policy has been in the hands of a single department, which now has jurisdiction not only in Manhattan but in the Bronx, in Brooklyn, and in Staten Island, all of which are a part of the greater city. The results of this concentration of authority in a single body have been most beneficial. The whole port, or such part of it as lies in the state of New York, can be developed as a unit, with due regard to the advantage and disadvantage of each part. If all the large steamers can not be accommodated on the west side of Manhattan, they may be accommodated in South Brooklyn; if a railroad applicant for pier space on the east side of Manhattan can not be accommodated there, it may be conveniently located in Wallabout Bay; if the ferry service between Manhattan Island and Staten Island is unsatisfactory, the city of New York constructs and operates municipal ferryboats to afford the desired service; and if the ferries operating across the East River are not adequate to carry the rapidly increasing number of passengers traveling between Manhattan Island and Long Island, tunnels are constructed under the river and subway trains operated through them. The advantages which the city derives from the concentration of port authority in a single administrative body are numerous and obvious.

In New Jersey the opposite conditions prevail. In that portion of the state which is commonly regarded as being within "the metropolitan district," embracing all or parts of the counties of Hudson,

Bergen, Passaic, Essex, Union, and Middlesex, there are scores of cities, towns, and villages, each of which has separate control of its own municipal affairs. Opposite Manhattan Island, on the west side of the Hudson River, are the towns of Edgewater, Guttenburg, and Weehawken and the cities of Hoboken and Jersey City, and farther to the south is the city of Bayonne. Each of these municipalities has a separate corporate existence, and each has the power, independently of the others, to take such action as it pleases with reference to the development of its own water front, or to take no action at all.

In 1910 the then governor of New Jersey appointed a commission of three members to study the problem of port development, and especially to find some method of accommodating large vessels in the harbor without extending the piers farther into the river. That commission worked in cooperation with a similar body representing the state of New York. In 1911, following the report of the New Jersey commission to the legislature of that state, the New Jersey Harbor Commission was created, consisting of five members. In 1915 this commission was merged, together with several others, into the New Jersey Board of Commerce and Navigation. Investigations conducted by this board led it to the conclusion that the present adjustment of freight rates results in injustice to New Jersey, and it therefore recommended to the governor of that state that he appoint a special committee to discover ways and means of procuring a more equitable rate adjustment. That committee, which is known as "the Committee on Ways and Means to Prosecute the Case of Alleged Rate and Service Discrimination at the Port of New York," was duly appointed, and it has joined with the New Jersey Board of Commerce and Navigation, and with the cities of Newark, Hoboken, Jersey City, and Elizabeth, in instituting the present proceeding.

There is no department or board in New Jersey, either state or municipal, whose powers are analogous to those possessed by the dock department of the city of New York. The New Jersey Board of Commerce and Navigation has power to lease or sell riparian lands belonging to the state; to inspect power vessels on inbound waterways; to aid in the movement for the construction of a ship canal across the state; to aid the municipalities in developing their water fronts; and generally to supervise the development of port facilities. The board has no power to construct docks or bulkheads, to dig channels, or to provide the funds which are needed for the proper development of the harbor. It can accomplish those things, if at all, only indirectly, by using its influence with the several municipalities and urging them to cooperate. Even the legislature of the state of New Jersey is forbidden, by a constitutional provision, to incur a debt of more than \$100,000 without the consent of the people of the state.

The New Jersey Harbor Commission found that the absence of a central authority in New Jersey was a decided handicap to the proper development of its waterways. In the fourth preliminary report of that commission it is stated:

Appendix I contains a map showing the various communities in New Jersey bordering on the harbor waters and tributaries, each with its own individual government and each exercising such control over its water front as is provided by its laws. This map shows also that the New York portion of the harbor is all under one central control over the water front. This would indicate the different policies of the two states, and New York's greater development and greater utilization of its water front points out a lesson for New Jersey to consider.

And in the same report the commission says:

From the studies made of the organization of the important seaports throughout the world, and from the observation of the present tendency of modern seaports to become public, as far as possible, for the receipt and shipment of commerce, it would appear that the only plan by which New Jersey can reap its proper share of the benefits from commerce is by the creation of a central port authority. It is probably impossible for enough of the communities to get together to form general port bodies in various local districts, and it therefore seems necessary that such a body should be a state body, with jurisdiction over the water front, the waterways, and the upland adjacent thereto, throughout the entire state \* \* \*. The whole railway situation in New Jersey and the whole waterways situation in New Jersey are both so closely connected and so dependent upon the policy in New York harbor that it must all be worked out as one general plan under one central control.

In one of the appendices to the report from which the above excerpts are taken, the commission said, in commenting further upon the lack of a central control in New Jersey, that "this division of authority has made it most difficult to adopt and carry out any comprehensive plan, and \* \* \* created many complications."

The policies of the two states have also differed widely with respect to the ownership of riparian rights. The state of New York has ceded to the city of New York a large part of the riparian rights which were formerly vested in the state. On some of the water front property thus obtained the city has constructed valuable improvements, and most of it has been leased to private and quasi public interests. In New Jersey it has been the policy of the state riparian commission to sell outright the riparian rights owned by the state, or to lease them with option in the lessee to purchase, and the most available of this property has been sold, principally to the railroads. We are told, in the report previously referred to, that "the state has already sold, or leased with a commitment to sell, the best of its water front."

The result of the division of authority in New Jersey and of the lack of foresight on the part of individual municipalities is strikingly evidenced at Jersey City. Located almost in the heart of one of the

best harbors in the world, with more than 5 miles of frontage on the lower Hudson River and upper New York Bay, and served by five of the country's great trunk lines of railroad; in short, possessing all the qualifications which a seaport of the first rank should have Jersey City has been content to see her valuable water front "turned into a huge railroad yard." Of her 5 miles of shore line more than 90 per cent is owned by the carriers. Of the 133 long piers on the New Jersey side of the harbor only one is publicly owned. An engineer employed by the municipal authorities of Jersey City in 1915 to study the general conditions of the water front and to report on the opportunities for developing it, discovered that of the total harbor frontage of 26,454 feet the city owned but 125 feet; and he could only report that Jersey City, "intended by nature to be a great seaport," had "failed lamentably in the realization of this manifest destiny" and that she had "entirely neglected to take advantage of these natural and artificial opportunities for greatness in maritime affairs."

#### THE PORT OF NEW YORK A COMMERCIAL AND INDUSTRIAL UNIT.

In that part of the state of New Jersey lying within a radius of 30 miles of Manhattan Island there are several cities engaged in manufacturing, including Newark, Jersey City, Paterson, Perth Amboy, Hoboken, Elizabeth, New Brunswick, and Passaic. The population of these cities, the number of wage earners, and the value of the products manufactured annually by each city are shown in the following table:

	Population.	Wage earners.	Annual value of manufactures.
Newark.....	366,721	59,955	\$202,511,539
Jersey City.....	270,903	25,450	128,774,000
Paterson.....	125,600	32,004	69,584,351
Perth Amboy.....	32,121	5,866	73,092,798
Hoboken.....	70,324	8,100	20,413,015
Elizabeth.....	73,409	12,735	20,147,326
New Brunswick.....	23,388	5,264	10,004,893
Passaic.....	54,773	15,066	41,729,257
Total.....	<sup>1</sup> 1,017,239	164,460	575,256,982

<sup>1</sup> The population of all the counties of New Jersey embraced in the New York rate group is 2,359,347.

The industrial district of northern New Jersey is so near the city of New York and so densely populated that the whole region, both in New York and in New Jersey, is commonly referred to as "the metropolitan district." Many thousands of people who are employed in New York have their homes in New Jersey, and every morning and evening the ferries, subway "tubes," and suburban trains are crowded with commuters traveling between their homes



and their places of business. In this respect northern New Jersey is quite as much a part of New York as is Brooklyn or Staten Island. Moreover, eight counties of northern New Jersey, including those in the metropolitan district, are embraced in the New York customs district as defined by the federal government; and throughout the metropolitan district there are industries engaged in the manufacture of the same articles, drawing their raw materials from the same source, and disposing of their products in common markets. The evidence shows that their proximity to New York has not been unfortunate for the cities of northern New Jersey. In the 1902 "Year Book" of the Board of Trade of Newark, N. J., we read:

The richest city in the world keeps an open door for the products of our mills, workshops, and factories. The millions of capital employed in promoting the distribution of the world's products from the warerooms of New York are at the command of our business men and the fleets of all nations riding on the waters of the Hudson and East rivers stand ready to distribute these products in all parts of the world at the lowest possible cost to the producer.<sup>1</sup>

The defendants raise the point that both sides of the port have for years been accorded the same rates by the boat lines serving it. Since the very earliest days of transportation through the Erie Canal it has been customary to apply the same rates by boat from Manhattan and Brooklyn as from Jersey City and Hoboken, and the same policy will be followed when the new barge canal is completed. The advantages which New Jersey may derive from the opportunities afforded by the new canal have already been mentioned. Moreover, the rates published by the carriers operating over the ocean-and-rail routes, which carry a large tonnage between New York harbor and points in the west, are the same from Jersey City and Hoboken as from New York, although all of the vessels engaged in this traffic sail from the Manhattan side, and an additional lighterage service must therefore be performed on traffic moving to or from points in New Jersey. All parts of the port are regarded as a rate group in the construction of export rates, the defendants' export rates applying to ship side, and, as we shall see later, the complainants concede that that adjustment should be continued. The fact that the boat lines have so long accorded the same rates to both sides of the port is

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<sup>1</sup> The president of the Public Service Corporation of New Jersey said in a recent address: "It is undoubtedly true, as all these authorities show, that the drift is away from Manhattan as a place of residence and as a place of industrial manufacture, out to the immediate suburbs; and those suburbs are, as I said a moment ago, Westchester county, the borough of Bronx, Long Island, and New Jersey \* \* \*. In 1890 the population of New Jersey was in round figures, 1,450,000; in 1900 it was 1,500,000; in 1910, 2,500,000; and in 1915, 2,850,000 \* \* \*; for while it is true that we prosper largely because of our proximity to New York as a suburban place of residence, the commercial aspect of the growth is even of more importance, and for that same reason \* \* \*. It may interest you to know that this line from Newark to New York (referring to the Hudson 'tubes') is every day in the year carrying to and fro thirty-odd thousand people—over a million a month."



thought by the defendants and the interveners to suggest the undesirability of requiring the trunk lines to construct their domestic rates in such a way as to "split the port."

The report of the interurban committee of the Newark Board of Trade for December, 1906, refers to the fact that a large part of the port of New York lies in New Jersey, and as if for the purpose of emphasizing this thought a map of the whole port is printed on the first page of the report, over which are prominently displayed the words: "Northern New Jersey Considered as Part of the Port of New York." The map, which is reproduced in Appendix E, seems to show beyond question that even from the New Jersey viewpoint the port is properly to be considered as an organic whole. At any rate it is obviously necessary, in determining the propriety of requiring a departure from the long-established practice of according the same rates of freight to all parts of the metropolitan district, to give due consideration to the fact that the whole district is an industrial and commercial unit.

#### THE LIGHTERAGE AND FLOATAGE SERVICE.

When freight consigned to points in Manhattan or Brooklyn arrives at the terminals of the rail carriers on the New Jersey shore the cars are placed in holding yards to await orders. When proper instructions are received they are moved out of the holding yards for delivery to piers or float bridges, from which the shipments are transported by lighters or the cars themselves by car floats to points on the other side of the harbor. "Lighters," which are small boats somewhat similar to ordinary barges, are used for transferring commodities from place to place in the harbor. Some of them are self-propelled, but most of them must be towed. Car floats, larger vessels with flat decks upon which railroad tracks are laid, are used in transporting loaded and empty cars between the railroad terminals on the Jersey shore and railroad stations or private stations in other parts of the port. Their capacity is usually from 10 to 16 cars, and they are towed by tugs. Cars are transferred from the carrier's rails to the car floats by means of "float bridges," which are also equipped with rails. It is said that the trunk lines operate 1,400 boats in the lighterage and floatage service and that 600 more are employed by independent companies. There are 96 float bridges in the harbor.

Whether a lighter or a car float shall be employed in transferring a shipment from one side of the harbor to the other depends upon the nature and volume of the shipment and upon the kind of delivery desired. At numerous points along the shore, and particularly on the western side of Manhattan Island, the carriers maintain "pier

stations," which are large covered piers used for the receipt and delivery of freight. Both lighters and car floats may receive or discharge their cargo at these stations. The piers are usually divided into numbered or lettered sections, with a driveway along the center for the accommodation of trucks which come to the piers in great numbers daily to receive and discharge freight. The shipments are placed on the pier and held there, subject to rules and regulations as to storage, until called for by the consignees or their agents. The so-called auxiliary terminal companies on the Brooklyn shore are also provided with piers for the accommodation of lighters and car floats, and they also haul their own floating equipment. In addition to these pier stations are piers or bulkheads, comparatively few in number, which are owned or leased by private concerns.

When freight is consigned to a private pier it is usually necessary to employ a lighter, because there is not a sufficient quantity of freight to warrant the use of a car float, the carriers requiring a minimum load of six cars for their car floats. At the railroad pier stations cars and lighters are usually loaded and unloaded by the carriers without extra charge; at private piers the loading or unloading is done by the shipper or consignee, but he receives from the carrier for that service an allowance of 12 cents per ton, minimum \$2 per car.

With respect to export freight the practice is similar to that already described, except that the shipments are transferred to a vessel rather than to a pier station. The carriers' rates usually apply to ship side, making it obligatory upon them to deliver the shipments to the vessel's sling or to the pier at which it is lying. Less-than-carload export shipments are usually floated to the carriers' pier stations, from which they are drayed by shippers to the steamer's dock; except that in the case of through billing this transfer service is performed by the railroads or by their agents. Import freight is usually carried in lighters directly from the vessel to the pier stations or terminals of the rail lines.

With certain exceptions, which will be referred to later in this report, the trunk lines perform the lighterage and floatage service to or from any point within the "lighterage limits" without imposing any charge in addition to the line-haul rate. The area within the lighterage limits, which are indicated on the map, *ante*, facing page 650, may be described roughly as extending along the New Jersey shore from Bayonne to Fort Lee; along the west side of Manhattan Island from One hundred and thirty-fifth street to "the Battery"; on the east side of Manhattan from "the Battery" to One hundred and fifty-fifth street, Harlem River; on the Brooklyn shore from Astoria to Bay Ridge; and on Staten Island from Arlington to Clifton.

## THE COST OF THE TERMINAL SERVICE.

Because of the peculiarity and the unusual complexity of the terminal operations at the port of New York it is difficult, if not impossible, to arrive at an accurate determination of the cost of transferring freight across the harbor in lighters and car floats, or to compare it with the cost of effecting delivery in New Jersey. A large part of the record in the present proceeding has been devoted to this question, however, and a brief résumé of the evidence will perhaps give a fairly satisfactory idea of the nature of the transfer service and of the cost which it involves.

The principal witness testifying for the complainants with respect to the cost of lighterage and floatage had been employed for more than six years as terminal and lighterage agent of the Delaware, Lackawanna & Western Railroad at New York, and also as general manager of the Harlem Transfer, a subsidiary of that company. In these capacities he was afforded an excellent opportunity for studying the terminal conditions at the port, including the operation of lighters and car floats. Before proceeding to an analysis of the cost figures introduced by him, it is proper to observe that his estimates are most general in character, that his figures were not scientifically compiled, and that they represent merely his best judgment as to the cost of the various operations. He conceded that in compiling his cost figures he had given no consideration to the investment which the carriers had made in their terminal facilities, although that item is obviously important, or to the matters of insurance, taxes, maintenance, or depreciation. His estimates seem to have been based in large part on what he designates the "pay roll cost," but even this seems to have been nothing more than his best estimate of the cost of labor, derived from his general familiarity with the pay rolls, rather than from a careful study or analysis of labor costs. Under these circumstances the estimates of this witness are not particularly helpful, but they are supported in a general way by other evidence of record and they will be briefly summarized.

With respect to the handling of less-than-carload shipments eastbound the estimates are as follows, the figures showing the cost per ton, and the estimates being based on an average loading of 10 tons: (1) Consolidating shipments at classification yard on New Jersey meadows, 30 cents; movement of car from transfer platform in meadows yard to float-bridge yard at Jersey City, 15 cents; switching car to float bridge and floating to pier station, 70 cents; unloading and classifying at pier station, 55 cents; rechecking and repiling on pier and delivering to truck, 10 cents; total, \$1.80.

The cost of handling a 20-ton carload of eastbound freight is given as follows: Moving car from meadows yard to float-bridge classifica-

tion yard, 10 cents; classifying, loading on car float, and floating to pier station, 70 cents; unloading from car float to pier, rechecking, and delivering to truck, 45 cents; total, \$1.25.

In the same manner it is estimated that it costs \$1.07 per ton to handle westbound lighterage freight in carload quantities, the cost of the initial delivery to the lighter being 17 cents, and the cost of floating the shipment to Jersey City and placing it in a car at that point being 90 cents. By a similar process it is estimated that it costs \$1.47 per ton to transfer westbound less-than-carload freight from the piers in New York to the classification yards in New Jersey.

The fact that the above estimates include no allowance for the cost of the property investment is of particular significance in view of the unusual expense of the terminal properties and the facilities employed in the lighterage and floatage service. The terminal property on the shores of Manhattan and New Jersey is of great value. The cost of the floating equipment is approximately as follows: Steam lighters, \$55,000 each; barges and ordinary lighters, \$10,000; steam hoisting barges, \$8,000; car floats, \$40,000 to \$60,000; tugs, \$25,000 to \$125,000; and float bridges, \$35,000.

In determining the cost of the terminal service consideration should be given to the time employed and to the delays encountered. We shall discuss later in this report the propriety of the defendants' practice of allowing five days' free time at Jersey City on shipments consigned to "New York lighterage." An additional period of two days, and in some instances three days, is allowed after the car reaches Manhattan or Brooklyn, making a total free time of seven or eight days on all this traffic. After orders are received to forward a car from the classification yard in New Jersey to a specified point within the lighterage limits, it usually requires two days to effect delivery. An additional period of two days is required for unloading the car, and still another period of two days to return it to the yards in New Jersey. The floating equipment is often delayed, and we are told that lighters and barges frequently lie at piers for more than five days waiting for an opportunity to load or unload.

In *Lighterage and Storage Regulations at New York*, 35 I. C. C., 47, exhibits were submitted showing the average cost to six trunk lines in 1913 of handling all lighterage freight at the port of New York, and the parties to the present proceeding have agreed that that evidence may be considered a part of the record in this case. A summary was made showing, first, the cost of the lighterage service to the Lehigh Valley Railroad; second, the total cost obtained by taking in each instance the lowest figure given by any of the six lines; and, third, the total cost obtained by using in each instance the highest figure given by any line. The summary follows.

*Cost of lighterage, in cents per ton.*

	L. V. R. R.	Lowest.	Highest.
Handling from cars to piers in New Jersey.....	11.6	12.0	15.1
Handling from piers to lighters.....	15.6	12.0	18.0
Maintenance of vessels.....	16.6	.....	.....
Operation of vessels.....	30.4	<sup>1</sup> 34.9	70.0
Discharge from lighters.....	11.6	9.5	14.3
Total.....	85.8	68.4	117.4

<sup>1</sup> Does not include maintenance or depreciation.

The defendants agree that these figures "may be taken as fair illustrations of the lighterage cost at New York during 1913." It will be noted that the figures do not include any provision for the cost of moving cars from the general classification yards to the piers, although that must be considered a part of the terminal operation.<sup>1</sup>

The president of the Bush Terminal Company submitted figures showing the cost per ton of freight of that company's floatage and lighterage operations in 1916. The cost of floatage, including the service performed by the terminal railroad on the Brooklyn shore, but excluding the switching service performed by the trunk lines on the New Jersey shore, was approximately 75 cents per ton. The actual cost of the lighterage service for four months in 1916 was \$1.08 per ton. It is the opinion of the president of the Bush Terminal Company that the cost to the railroads of performing the lighterage and floatage service exceeds the cost to his company.

To show that the cost of delivering freight in New Jersey is much less than the cost of carrying it in lighters or on car floats to Manhattan and Brooklyn the complainants introduced exhibits and testimony purporting to show that the deliveries in New Jersey are simple and relatively inexpensive. One of the exhibits shows a "repre-

<sup>1</sup> As further indicating the expense incurred in the lighterage service the complainants have filed in the record a copy of an address made one year ago by the manager of the marine equipment of the Central Railroad of New Jersey. The following is an extract from that address:

"Although the price of boat construction, wages, repairs, supplies, and every other kind of expense incidental to the operation, has increased from decade to decade, there has been no increase in the allowance to the terminal roads for performing the lighterage service in New York harbor, with the result that the railroad companies are lighterage an enormous tonnage for the public at an actual cash loss.

"For illustration, the lighterage limits originally ended at Sixty-third street, East River, but have been extended \* \* \* to One hundred and fifty-fifth street and Harlem River. The total lighterage revenue the railroad company receives for the delivery of, say, a car of 80,000 pounds, from their terminal to points in the Harlem River, amounts to only \$24; the towing from the Jersey terminals to the Harlem River point and back costs \$35, to which must be added the wages of the crew, insurance on cargo, wharfage, stevedoring, the use of the boat, etc., or an aggregate expense showing conclusively that in nearly every instance the cost of making a free lighterage delivery in such zones will amount to more than the railroad company in many instances will receive for the haul from the initial point to the point of delivery."

47 I. C. C.



sentative list of various industries having private sidings along the Pennsylvania Railroad in interior New Jersey and the distances from the Pennsylvania Railroad freight yards." The average distance from the freight yards to the 104 private sidings shown on the exhibit is 0.37 miles.

The exhibit is subject to criticism for several reasons. In the first place the sidings shown are located in Newark, Elizabeth, Rahway, Woodbridge, New Brunswick, Princeton, and Trenton, interior New Jersey points, where the cost of delivery must be less than in the congested district along the shore at Jersey City and Hoboken. In the second place the witness who introduced the exhibit admitted that the distances shown do not necessarily represent the actual switching distance, because he was not familiar with the actual movement of the car in most instances from freight yard to siding. The distances shown on the statement were taken from an official list of yards and sidings published by the transportation department of the railroad, and although their accuracy has not been questioned, they do not necessarily represent the actual switching distance. Without dwelling upon the value of this exhibit it may be said with confidence that the cost of delivering freight at interior points in New Jersey, such as Trenton, Elizabeth, and Paterson, does not exceed the average cost of effecting such delivery in other parts of the country where team tracks and industrial sidings are used for that purpose. We must accept as sound the complainants' contention that the deliveries at the interior Jersey points are relatively simple and inexpensive and that the deliveries in New York harbor are peculiar in nature and unusually expensive.

It has already been explained that all freight arriving at the New Jersey shore from the west first goes to general classification yards to be classified for the various deliveries. Some of these yards, such as those of the West Shore and the Central of New Jersey, are located at or near the water front, while others, like those of the Pennsylvania and the Lackawanna, are several miles inland. To determine the cost of delivering freight at stations in New Jersey on the one hand, and in Manhattan and Brooklyn on the other, it would seem proper to take the general classification yard as the starting point and compare the service from that point to the various points of delivery. Unfortunately, such comparisons of cost are not shown of record with even approximate accuracy, and we must content ourselves with general comparisons of the different services.

The exhibit previously referred to, purporting to show that the terminal service performed on New Jersey traffic consists simply of a switching movement of slightly more than one-third of a mile,



though properly to be accepted as generally indicative of the nature of the deliveries at the interior points, overlooks several important considerations, which are enumerated substantially as follows in the brief filed on behalf of the city of New York, intervener: (1) The fact that the lighterage and floatage service must be performed on certain traffic to and from points in New Jersey and on Staten Island; (2) that the New York zone rate applies to a large area in New Jersey, and that the tariffs provide in many instances for delivery at the terminals of several carriers, necessitating a terminal service by no means simple or inexpensive; (3) the terminal service performed by independent terminal companies and switching roads in New Jersey involves an additional expense to the carriers; and (4) the actual length of the switching movement in New Jersey is in many instances much greater than the evidence introduced by the complainants would indicate. Each of these points will be briefly discussed.

The lighterage limits at the port of New York, previously defined, include points along the New Jersey shore from Bayonne to Fort Lee, a distance of approximately 15 miles. All the trunk lines deliver freight by lighter to the industries along the New Jersey shore within those limits without assessing any charge in addition to the New York rate. The terminal of the Brooklyn Eastern District Terminal at the foot of Warren street in Jersey City is reached by car floats and lighters. Many points on Staten Island are within the lighterage limits, and although the Baltimore & Ohio is the only carrier reaching Staten Island with its own rails, the New York zone rates are extended by all the trunk lines to stations on the Staten Island Rapid Transit Railway, which extends the whole length of the island. The West Shore Railroad, for example, applies the New York rates to 33 stations on the line of the Staten Island Rapid Transit, although the West Shore can reach Staten Island only by lighter or car float from Weehawken, several miles distant. It is insisted by the complainants and admitted by the defendants that Staten Island is entitled to the same rates as northern New Jersey.

In several instances the tariffs of the trunk lines provide for the application of the New York zone rates to and from points on the lines of their competitors at Jersey City or Hoboken, and the switching charge of the terminal carrier is usually absorbed by the carrier performing the line haul. The West Shore, for example, applies the New York rates to and from points on the Erie several miles distant from its general classification yard at Weehawken. A switching charge of \$10 per car published by the Erie is absorbed by the West Shore on both competitive and noncompetitive traffic. Practically

the same arrangement, except as to the amount of the switching charge, exists between the West Shore and the Pennsylvania. These absorptions should obviously be considered in comparing the expense of delivery in New Jersey with that incurred in New York.

We have already referred to the fact that freight is carried to and from the Warren street station of the Brooklyn Eastern District Terminal by lighters and car floats. That terminal is within the lighterage limits, and takes the New York rates. For its service in lightering or floating freight between the railroad terminals on the New Jersey shore and its Warren street station the terminal company receives the same allowances as all of the auxiliary terminal companies receive on Brooklyn traffic. The trunk lines also make allowances in some instances to the Hoboken Shore Road, a small privately owned switching railroad at Hoboken. The amount of the allowances is not disclosed by the evidence.

The distances from the general classification yards to points of delivery in New Jersey are in many instances greatly in excess of the average distance of 0.37 miles shown on the exhibit previously mentioned. The West Shore, for example, has its classification yard at Weehawken. We have already observed that it applies the New York rates to stations on the line of the Erie Railroad near the New Jersey shore, absorbing the switching charges published by the latter carrier. Some of the stations in question are located several miles from the Weehawken yard. The West Shore also applies the New York rates to points on the National Docks Railway, a part of the Lehigh Valley Railroad, shown on the map, *ante*, facing page 650. The various points on the National Docks Railway taking the New York rates are shown in the tariffs, as are also the names of the various industries on the line of that carrier in Jersey City, Bayonne, and Constable Hook.<sup>1</sup> Traffic consigned to these points is hauled by the West Shore from Weehawken over the line of the New Jersey Junction Railroad, a subsidiary line connecting with the National Docks Railway at National Junction, Jersey City, thence to destination. The distance from Weehawken to National Junction is 4.31 miles. The distance from National Junction to the Eagle Oil Refinery, one of the industries of the National Docks Railway, is 3 miles; to East Forty-ninth Street, Bayonne, 5 miles; and to Constable Hook, 7 miles. The total length of the terminal movement from Weehawken to the points of delivery above named is therefore from 7.31 to 11.31 miles. It can not be said with confidence that the cost of this terminal service is less than the cost of floating a car from the Weehawken shore to Brooklyn and effecting delivery there.

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<sup>1</sup> A portion of the tariff referred to, Carl Howe, agent, I. C. C. No. 2, is shown in Appendix F.

47 I. C. C.

The Lehigh Valley Railroad also delivers carload freight at the New York rate to numerous points along the New Jersey shore, and although the record does not show clearly the location of its general classification yard, or the actual length of the various switching movements, a general idea of the nature of the service may be gained from an examination of the tariff, which provides that "freight in carload lots consigned to New York harbor or Jersey City, N. J., 'lighterage free,' when not otherwise restricted, may be forwarded without additional charge" to the following points in New Jersey: Claremont yard, Constable Hook, Greenville, Avenue D, Hoboken Manufacturers' Railroad (the "Hoboken Shore Road" previously referred to), and eight stations in Jersey City, including the Warren street station of the Brooklyn Eastern District Terminal. A casual examination of several of the maps filed of record shows that these stations are in some instances several miles apart. A car moving from the Lehigh Valley terminal to a point on the Hoboken Shore Road, for example, must move over the West Shore (New Jersey Junction Railroad) tracks and a short distance over the tracks of the Erie before it reaches the line of the terminal carrier.

The complainants raise two objections to the consideration of these items of delivery cost in New Jersey. Their first point is that due consideration should be given to the fact that these relatively expensive deliveries are confined to a narrow territory adjacent to the harbor; and that at interior points in New Jersey, such as Paterson and Trenton, the deliveries are simple and comparatively inexpensive. The point is well taken, but we fail to see that it destroys the force of the contention that in some instances the New Jersey deliveries are far from simple. In dealing with other aspects of the case before us we are asked by the complainants to consider the northern part of the state of New Jersey as a whole. Not even the complainants contend that the rates to Trenton and Paterson should be lower than those to Jersey City and Hoboken; on the contrary they contend that all these points should be embraced, as they now are, in the same rate group. That being true, it is clearly proper, in comparing the delivery cost in New Jersey with that in New York harbor, to take into consideration the nature and expense of delivery in all parts of northern New Jersey; and if it be true, as the record shows it to be, that the delivery of freight in Jersey City and Hoboken is in some instances relatively expensive, involving an absorption by the trunk lines of switching charges amounting to \$10 per car, that fact is entitled to due weight in determining the merit of the complainants' contention that the New Jersey rates should be lower solely because of the lower cost of delivering freight in New Jersey.

The complainants' second objection to the consideration of the cost of delivery at Jersey City and Hoboken is that the absorption by the trunk lines of the switching charges of other carriers is simply a competitive measure. If the West Shore, for example, desires to compete with the Erie for traffic originating on the Erie's rails at Jersey City, and is willing to absorb the Erie's switching charge of \$10 per car, it is said that this is merely a matter of policy on the part of the West Shore, and should not be taken as indicative of the cost of delivery in New Jersey. This contention is not without merit, but it overlooks the important fact that the lighterage charges for harbor delivery are likewise absorbed for competitive reasons. It seems not improper, therefore, to compare the one kind of delivery with the other; and this is true in spite of the complainants' contention that New Jersey has an advantage in that it is served in all instances by direct rail routes from the west, whereas points in Brooklyn, for example, can not be reached without the employment of lighters or car floats. In *Lighterage and Storage Regulations at New York, supra*, at page 52, we said, in effect, that the lighters and car floats may properly be regarded in a sense as merely an extension of the rails of the trunk lines from Jersey City to Manhattan and Brooklyn, a thought that emphasizes the impropriety of according lower rates to the New Jersey cities solely because lighters and car floats are not usually employed in effecting delivery there. In this connection it is interesting to note that the floatage absorption on a 30,000-pound car, based on a payment of 3.2 cents to a terminal company, amounts to \$9.60, slightly less than the \$10 switching charge mentioned above; and in discussing the complainants' contention that the inclusion of northern New Jersey in the New York rate group prejudices the New Jersey shippers by requiring them, in effect, to pay for a lighterage service not performed for them, the defendants ask us not to overlook the fact that the cost of lighterage and floatage is borne in nearly every instance by them, and not by the shippers on whose behalf the complaint was filed.

It is deemed unnecessary for the purposes of this report to dwell at greater length upon the nature of the terminal service on the New Jersey shore. It is proper to add, however, that in the portion of New Jersey in which the terminals of these carriers are located real estate values are high. In Hoboken, Jersey City, and Bayonne the defendants' tracks must cross the city streets, or traverse them on elevated structures. That this presents a real problem to the carriers is attested by the evidence of one of the commissioners of Jersey City, who told of the danger of having the railroad crossings at street grade; and although a state statute requires that each carrier elevate a certain portion of its tracks each year this can be done only at great expense. The defendants show that the assessed value of

their several terminals, claimed by a witness for the complainants to be less than their actual value, is as follows:

Delaware, Lackawanna & Western.....	\$10, 717, 589
Lehigh Valley.....	7, 080, 126
West Shore and New Jersey Junction.....	10, 791, 257
Erie .....	12, 369, 386
Central Railroad of New Jersey.....	12, 503, 069
Pennsylvania.....	18, 520, 688

These terminal properties are used on practically all New York traffic and to a much less extent on New Jersey traffic. The defendants and the interveners call our attention to the fact that the lighters and car floats move over the waters of the harbor without investment expense to the carriers, without expense for maintenance of way, and without encountering the difficulties of operation experienced by railroads in congested districts.

From a general comparison of the services rendered in each instance it would seem to appear that the cost of delivery at interior points in New Jersey is decidedly less than the average cost of effecting delivery in New York harbor, and that the cost of delivering a car in Jersey City, Hoboken, or Bayonne is sometimes less and sometimes greater than the cost of harbor delivery.

The nature and cost of the lighterage and floatage service will be further considered later in this report in connection with the allowances paid by the trunk lines to the private terminal companies.

#### EXPORT AND IMPORT RATES AND PORT DIFFERENTIALS.

The complaint in this proceeding is comprehensive in character, apparently bringing into issue the reasonableness and the propriety of all the "rates" maintained by the defendants for the transportation of property between points in the west and the two sides of the port of New York. Throughout the hearing it was the understanding of the parties that the reasonableness and the propriety not only of the domestic rates but of the export and import rates were in issue. Representatives of Boston, Philadelphia, and Baltimore took an active part in the hearing, and it was apparent that they were primarily interested in the export rates, especially those on export grain, their contention being that the establishment of rates to Jersey City on the basis suggested by the complainants would seriously disturb the long-established relationship in the rates to the various ports and give to the western part of the port of New York such an advantage with respect to export and import traffic that the interests of competing ports would be seriously prejudiced. Witnesses were examined at length concerning the export and import rates, the volume of exports and imports through the various ports, and the history of the adjustment of export and import rates; and numerous



pertinent exhibits were filed. Late on the last day of the hearing the complainants announced that neither the export nor import rates were in issue and that complainants seek relief only with respect to the domestic rates.

Whether this announcement was, as the complainants state, merely an explanation of a position consistently maintained throughout the proceeding, or whether, as contended by the defendants and the interveners, it had the effect of suddenly narrowing the issues, its importance is obvious. We have already observed that all but six of the steamship lines now engaged in the foreign trade sail from the New York side of the port; and, although nearly all of the enormous export tonnage moving through the port of New York is carried across the harbor in lighters or car floats, the complainants concede that it would be inadvisable to apply lower export rates from one side of the port than from the other. We take the following from complainants' brief:

It would be entirely practicable and altogether logical for the defendants, in the event that they are required to establish a lower basis of rates to the Jersey cities than to New York, to continue to maintain one line of export and import rates to and from New York harbor. The rates might be the same as the New York rates, or midway between the New York and New Jersey rates, or at any other reasonable point that the carriers saw fit to fix them.

The defendants and the interveners contend, however, that the complainants' announcement does not materially alter the aspect of the case from their point of view, because even a change in the domestic rates would seriously disturb the prevailing relationship between the several ports, and inasmuch as a large portion of the export traffic moves to the seaboard on domestic rates, the export business would necessarily be affected by a change in the domestic rates. During the period of one month in the summer of 1916 the inbound freight received at the New York harbor terminals of the several trunk lines aggregated 2,519,969 tons, of which 1,141,947 tons were for export. Of the export tonnage 73.2 per cent moved on special export rates and 26.8 per cent on domestic rates. Special export rates, lower than the corresponding domestic rates, have been published on only a comparatively few commodities, notably grain and its products, iron and steel articles, and agricultural implements; and the interveners direct our attention to the fact that the defendants are endeavoring to reduce gradually the number of commodities upon which the special export rates are published.

The competition between carriers which resulted ultimately in the adoption of the so-called port differentials began soon after the middle of the last century. The New York Central and its connections opened the first through route from New York to Chicago in 1852, and through rates were first published in 1857. At that time



the New York Central was the only carrier reaching New York harbor with its own rails, but the Baltimore & Ohio participated to a certain extent in the New York traffic by means of a boat line from Baltimore. The Erie Railroad reached Jersey City in 1862, the Pennsylvania in 1866 or 1867, and the Delaware, Lackawanna & Western in 1869. The lines of the Pennsylvania system were extended to Chicago in 1858, those of the Erie several years later, and the Baltimore & Ohio reached Chicago for the first time in 1874.

The establishment of through routes by these carriers between New York and Chicago marked the beginning of a period of intense rivalry between them which is without a parallel in the history of American transportation. Grain, which is said to have constituted 73 per cent of the total tonnage carried by the trunk lines to the principal Atlantic ports in 1881, was the traffic most desired by each of the carriers. The principal terminals of the New York Central, the Lackawanna, and the Erie were at the port of New York, those of the Pennsylvania at Philadelphia, and those of the Baltimore & Ohio at Baltimore; and each carrier exerted every possible effort to have the export traffic move through the port in which it was primarily interested. Thus it came about that the competition between carriers became in turn a competition between ports. That the rivalry is as yet unabated is abundantly attested by the evidence of record in the proceeding now before us.

The rate war resulting from the struggle between the trunk lines for supremacy was so severe as to make it apparent that its continuance would bankrupt all of the carriers, and steps were soon taken toward the establishment of a rate adjustment that would be satisfactory to all concerned. In 1877 a written agreement was signed by the New York Central, the Erie, the Pennsylvania, and the Baltimore & Ohio, the preamble of which stated that its object was—

to avoid all future misunderstandings in respect to the geographical advantages or disadvantages of the cities of Baltimore, Philadelphia, and New York, as affected by rail and ocean transportation, and with a view to effecting an equalization of the aggregate cost of rail and ocean transportation between all competitive points in the west and southwest and all domestic or foreign ports reached through the above cities.

The agreement provided that export rates to Boston should be no higher than those to New York; that the rates to Philadelphia should be 2 cents lower than those to New York; and that the rates to Baltimore should be 3 cents lower than to New York.

The question as to the propriety of the general rate adjustment established in conformity with the provisions of this agreement was presented to the Commission for determination in 1898, when

the New York Produce Exchange filed a complaint alleging that the port "differentials" gave an undue preference to Boston, Philadelphia, and Baltimore, to the undue prejudice and disadvantage of New York. *New York Produce Exchange v. Baltimore & O. R. Co.*, 7 I. C. C., 612. We held, after a careful review of the evidence submitted by the carriers and on behalf of the several ports, that the differentials in question were not unlawful, and we refused to disturb them. In 1904 the Commission was requested by commercial organizations of Boston, New York, Philadelphia, and Baltimore to investigate "the whole subject of differential rates to and from these four cities, and determine whether the present differentials should be abolished, or, if retained, modified." Such an inquiry was instituted on April 11, 1904, and the whole subject was again exhaustively considered. Evidence was submitted showing the advantages and disadvantages of the various routes and of the location of the several ports; the history of the competition between the trunk lines was reviewed; consideration was given to the volume of exports moving through each of the ports and to the rates maintained by the steamship lines; in short, the whole situation was carefully canvassed. Again we held that the differentials established by virtue of the agreement of 1877 should remain in force, but certain important modifications were made in the rates on grain and grain products. *In the Matter of Differential Rates*, 11 I. C. C., 13. In 1911 the Chamber of Commerce of the state of New York filed a complaint alleging that "the defendants maintain rates, charges, differentials, rules, and regulations to and from the city and port of New York which are unjust and unreasonable in themselves, and relatively so as compared with competitive ports, more particularly Philadelphia, Baltimore, Newport News, Norfolk, and Boston"; and again the whole subject of the port differentials was thoroughly reviewed. We made certain modifications in the differentials on grain, but again we refused to change the general scheme of differentials adopted by the agreement of 1877. *Chamber of Commerce of N. Y. v. N. Y. C. & H. R. R. Co.*, 24 I. C. C., 55.

It is important to observe that although the differential adjustment had its origin in the competition of the trunk lines for export traffic, the domestic rates to New York, Philadelphia, and Baltimore and points taking the same rates, were soon established upon the same basis as that provided for the export rates in the agreement of 1877. As early as 1882, if not before that date, the domestic class and commodity rates to Philadelphia were lower by 2 cents per 100 pounds than the corresponding rates to New York, and the rates to Baltimore were made 3 cents lower than New York. In other words,

in the establishment of the rates on all domestic traffic from points in the west to points in the New York, Philadelphia, and Baltimore rate groups the same recognition was accorded to the differentials as in the construction of the export rates.

In the second case above cited we said:

These differentials have undoubtedly been established in the past with a view almost entirely to their influence upon the movement of export business. It is, however, of importance that rates between these cities and the west should be fairly adjusted with respect to domestic traffic. If the supplies with which the artisans of Baltimore work and upon which the population of Baltimore lives are transported for a less cost from the west to Baltimore while the products of its factories are sent back at a less cost to be consumed in the west, this would be an important element making for the prosperity of that locality as compared with other localities where the cost of transportation was more. Now, if there had been no export business in the past, if these domestic rates had been adjusted solely with a view to what was right between the communities, it is altogether probable that the differentials in favor of Baltimore and Philadelphia would have been even greater than they are to-day.

This observation is pertinent in view of the complainants' contention that the port differentials, having had their origin solely in competition between the trunk lines for export traffic, should not be considered controlling in the determination of domestic rates. The relief suggested by the complainants at the opening of the hearing is that the northern part of the state of New Jersey be placed "substantially upon the Philadelphia basis of rates." Not only would the granting of this relief completely wipe out the differential which at present exists between Philadelphia and northern New Jersey, but it would necessarily disturb the relationship between the rates to points in northern New Jersey and those to Baltimore. On behalf of the Philadelphia interests it is insisted that many industries have located in Philadelphia for the very reason that the rates to and from that point are lower than the rates to and from points in the New York rate group; and we are warned that if the relief sought by the complainants is granted the Philadelphia interests will immediately demand not only the restoration of the present differential but one which will more nearly reflect Philadelphia's advantages. The same position is taken by Baltimore, which contends that its advantage in rates over New York must necessarily be increased if due recognition is given to transportation costs in the construction of rates.

The defendants express of record their apprehension that a reduction in the domestic rates to points on the New Jersey shore would induce shippers to ship export traffic to those points on the domestic rates; a consideration which the complainants deem of little importance in view of the fact that it would be incumbent upon the

shipper to provide for lighterage or drayage to ship side, and the fact that the free time allowed in connection with the domestic rates would hardly be adequate for export shipments. The complainants call attention to the fact that the trunk lines have not at all times been in accord as to the propriety or the amount of the port differentials, and that quite recently several of the lines reaching New York harbor have expressed the view that the rates should be the same to all the ports, an attitude apparently inconsistent with the contention they now advance, that it would be inadvisable to disturb a rate structure which has existed for years.

THE RATES ON GRAIN FOR EXPORT.

We have just observed that certain commercial interests of the cities of Philadelphia and Baltimore intervened in this proceeding primarily for the purpose of opposing a disturbance of the export rates on grain, and a large part of the record deals with those rates. The complainants having expressly disclaimed any intention of challenging in this proceeding the propriety of any of the export rates, the interest of these interveners is less direct than it would have been otherwise. The following table shows the reshipping export rates and the domestic rates on the various kinds of grain from Chicago to the principal Atlantic ports:

*Reshipping rates on grain, in cents per 100 pounds.*

From Chicago, Ill., to—	Domestic.	Export.
Boston, Mass.....	18.8	15.3
New York, N. Y.....	16.8	15.3
Philadelphia, Pa.....	14.8	14.3
Baltimore, Md.....	13.8	13.8

It will be noted that the usual port differentials are observed in constructing domestic rates to New York, Philadelphia, and Baltimore. The export rate to Baltimore was increased from 12.5 cents to 13.8 cents, the domestic basis, on March 12, 1917, when the rates to the other ports were increased by the same amount. It is this tendency on the part of the carriers to bring their export rates more nearly to the domestic basis that prompts the interveners to insist that even the domestic rate can not be changed without affecting the export traffic. It will be observed, for example, that to reduce the domestic rate to Jersey City to the Philadelphia basis, as sought by the complainants, would make the domestic rate to Jersey City lower than the export rate to New York.

In 1916 approximately 60 per cent of the grain received at Philadelphia was ex lake grain. The following table shows the rates on 47 L. C. Q.

ex lake grain from Buffalo, N. Y., to the several ports, in cents per bushel:

*Rates on ex lake grain, in cents per bushel.*

From Buffalo, N. Y., to—	Wheat.	Corn.	Oats.	Rye.	Barley.
<b>Boston, Mass.:</b>					
Domestic.....	8.4	7.9	4.7	8.1	6.8
Export.....	6.6	5.3	3.9	6.1	5.2
<b>New York, N. Y.:</b>					
Domestic.....	6.8	5.5	4.2	6.3	5.6
Export.....	6.6	5.3	3.9	6.1	5.2
<b>Philadelphia, Pa.:</b>					
Domestic.....	6.8	5.5	3.95	6.3	5.6
Export.....	6.3	5	3.7	5.8	5
<b>Baltimore, Md.:</b>					
Domestic.....	6.8	5.5	3.95	6.3	5.6
Export.....	6.3	5	3.7	5.8	5

It will be observed that the domestic rates on ex lake wheat, corn, rye, and barley are the same to Baltimore and Philadelphia as to New York. Philadelphia's advantage over New York on export wheat, corn, and rye is only 0.3 of 1 cent per bushel and 0.2 of 1 cent on oats and barley. The Philadelphia dealers point out that even this small advantage practically disappears when the charges for elevation are considered. At New York grain is loaded direct from elevator to vessel by the Lehigh Valley, the Erie, and the West Shore at a charge of one-half cent per bushel. At Philadelphia the charge is three-fourths cent per bushel. A difference of one-fourth cent per bushel seems almost negligible, but it must be remembered that the movement of grain is determined by very slight differences in rates; and the Philadelphia dealers remind us that one-fourth cent per bushel amounts to \$500 on a cargo of 200,000 bushels.

Approximately 40 per cent of the grain exported through the port of New York is handled in lighters or barges from the terminals of the rail lines to the vessels, floating elevators being employed to load the cargo from lighter to vessel. This method of "indirect" loading, which is made necessary because of the failure of some of the trunk lines to provide facilities for the direct transfer of grain from elevator to vessel, involves an additional cost to the shipper of 0.4 of 1 cent per bushel, the charge for indirect loading being 0.9 of 1 cent per bushel.

As three of the largest grain elevators at the port of New York are located on the New Jersey side of the harbor any reduction in the export rates to the New Jersey points would be prejudicial to the interests of grain dealers at the other ports. The opposition of the Philadelphia and Baltimore dealers to any change in the rate adjustment which would result in more favorable rates on export grain to any part of the port of New York is explained in part by the figures shown in the following table:

471. Q. Q.



*Exports of grain, in bushels.*

From—	1913	1914	1915	1916
Baltimore.....	46,857,881	51,451,422	90,171,002	120,357,686
New York.....	65,465,591	61,845,630	126,614,627	153,963,437
Philadelphia.....	22,266,757	22,661,802	44,585,632	49,886,575
Boston.....	26,239,646	16,555,340	16,695,447	23,274,441
Newport News.....	10,025,562	(1)	64,000,229	(2)

Not reported.

Not yet received.

It is hardly necessary to observe that the grain dealers at the various ports are much less interested in the domestic rates on grain than in the export rates. This is attributable not only to the fact that the movement of grain to the ports for domestic consumption is relatively small, but to an important difference in the methods of selling export and domestic grain. Exporters and other grain dealers are usually interested primarily in having grain move through the port where their business is established, because the port will be an important grain market only to the extent of its receipts and exports of grain; and the success of the export business and the business of commission men depends to a large extent on the standing of the port as a grain market. On the other hand a jobber of grain at one port frequently sells domestic grain to buyers at other ports. If a jobber in Philadelphia sells domestic grain to a buyer in New York, the shipment would move to that point and the New York rate would apply. Because of this method of selling domestic grain the jobbers and other grain dealers are interested in obtaining favorable rates of freight to all points, and because their interests are not centered in a single market the maintenance of a fixed relationship in the domestic rates on grain is a matter of comparatively small importance to them. As one witness expressed it, the competition with respect to domestic grain is not so much between freight rates as between merchants.

THE NEW YORK CENTRAL RAILROAD.

One of the largest and strongest of the trunk lines serving the port of New York, the New York Central Railroad, reaches the heart of Manhattan Island with its own rails, and therefore avoids the payment of charges for lighterage and car floatage on such traffic as it delivers directly at its rail terminals in Manhattan. The complainants having taken the position that the rates to and from Manhattan and Brooklyn should be higher than the rates to and from the northern part of the state of New Jersey solely because of the additional expense for lighterage and floatage incurred by the trunk lines whose terminals are on the New Jersey shore, the question naturally arises as to what rates the New York Central would charge on its Manhattan traffic if the prayer of these complainants were



granted. If the first-class rate of 78.8 cents,<sup>1</sup> for example, were maintained by the New York Central from Chicago to Manhattan and if the Philadelphia rates of 76.8 cents were extended to Jersey City and Hoboken, the New York Central Railroad would be obliged either to maintain a higher rate to Manhattan than its competitors contemporaneously maintain to Jersey City, or to reduce its rates to Manhattan to the Philadelphia basis. If it should maintain higher rates to Manhattan than its competitors charged to points on the New Jersey shore, it would obviously make it more difficult for Manhattan shippers to compete with New Jersey shippers; and in view of the fact that the New York Central performs no lighterage service on a large part of its Manhattan traffic, it would doubtless experience difficulty in endeavoring to explain the advantage which shippers in New Jersey would derive from such an adjustment. If, on the other hand, it should reduce its rates to Manhattan to meet the lower rates to the New Jersey shore, it would not only reduce its revenues materially, but it would apply over its line to and from Manhattan lower rates than those maintained from Manhattan by the other trunk lines, a situation which could hardly endure.

Witnesses for the complainant were asked at the hearing for their suggestions as to the best plan for avoiding this difficulty. One of them, the president of the New Jersey State Board of Commerce and Navigation, expressed the view that if the New York Central Railroad should obtain an advantage over its competitors by reducing its rates to and from Manhattan, the trunk lines whose terminals are on the New Jersey side of the harbor could meet this competition "by pooling their interests and coming into New York either through a tunnel or by way of a bridge and connecting with the New York Central tracks coming down on the New York side as a union railroad proposition." When asked how the New Jersey lines could meet the competition of the New York Central if the two sides of the port were not physically connected by tunnel or bridge, the witness replied that he did not know, but he later admitted that competitive conditions would necessitate the publication of the same rates from New York by all the lines. Mr. Tompkins, whose testimony has already been referred to, agreed that the only solution of the problem is a direct physical connection between the two sides of the harbor, but it is his view that if this connection were effected the rates to and from Manhattan should be the same as the rates to and from the points in the northern part of the state of New Jersey.

The New York Central Railroad operates under lease the line of the West Shore Railroad, whose tracks extend along the west side of the Hudson River to Weehawken, from which point it transfers

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<sup>1</sup> Rates referred to in this report are those in effect when the case was heard.

freight to other ports of the harbor by means of lighters and car floats. The position of the West Shore Railroad, therefore, is practically the same as that of the other trunk lines whose terminals are on the New Jersey side of the harbor. The New York Central handles through Weehawken substantially all export and import freight originating at or consigned to points west of Albany; substantially all freight to or from Brooklyn and Staten Island; and substantially all hay, flour, and lumber and other heavy commodities. A considerable part of the freight originating at or consigned to points on Manhattan Island is also handled through Weehawken. The total volume of freight handled over the line of the West Shore considerably exceeds the total amount carried by the New York Central on its line on the east side of the river. It is the custom of the New York Central Railroad to apply the same rates from Manhattan over its West Shore route through Weehawken as over its main line extending along the east bank of the Hudson River, and the two routes are used interchangeably whenever the carrier finds it convenient to do so. The New York Central's distance from Chicago to New York is 987 miles, 82 miles greater than the Pennsylvania's short-line distance. The distance over the West Shore is 966 miles.

Two witnesses for the complainants testified, in effect, that the facilities of the New York Central Railroad on Manhattan Island are limited, and that because of the inadequacy of its tracks and terminals the fact that it reaches Manhattan with its own rails should not be permitted to prevent the establishment of the rate adjustment which the complainants deem just and proper. The complainants further contend that the New York Central is unable to dominate the situation for the following reasons: (a) A very large part of the tonnage handled by the New York Central over its own rails on the east side of the river is delivered in Manhattan and Brooklyn by means of floats and lighters. Like the other trunk lines it owns and operates its floating equipment, and its extensive yard at Sixtieth street is devoted almost wholly to the handling of traffic between the rails and the boats. (b) On all traffic consigned to or from Manhattan and Brooklyn it would be unnecessary for the New York Central to reduce its rates even if complainants' prayer were granted, because the rates published by the New Jersey trunk lines to Manhattan and Brooklyn would remain on their present basis. (c) The position of the West Shore Railroad, which is leased and operated by the New York Central, is exactly the same, as far as lighterage and floatage are concerned, as that of the other lines whose terminals are on the New Jersey shore. (d) Because of its admittedly inadequate facilities and the congestion of its terminals the New York Central could not increase the tonnage which it handles even if it

should reduce its rates.<sup>1</sup> To meet this testimony the defendants have submitted evidence describing in some detail the facilities of the New York Central, the nature of its business, and the volume of freight which it handles.

The New York Central Railroad is one of the country's largest and strongest trunk lines. Either with its own rails or with those of other lines which it operates or controls it serves large parts of the states of Massachusetts, New York, Pennsylvania, Ohio, Indiana, Illinois, and Michigan. Although its principal route from New York to Chicago is somewhat longer than those of some of its competitors, it has an advantage in that its roadbed lies practically at water level throughout its whole course, whereas the lines of its competitors must cross a mountain range, encountering operating difficulties which are set forth in some detail in the record.

The main line of the New York Central extends along the east bank of the Hudson River and enters New York City on the west side of Manhattan Island. It runs along Riverside drive to Seventy-second street, where it has a freight terminal which extends as far south as Fifty-ninth street. From Fifty-ninth street to St. John's park, where it has another freight terminal, it runs through the streets of the city. The capacity of the Sixtieth street terminal is 3,000 cars, including certain tracks which are used for storage purposes. At or near this same terminal are six piers owned or leased by the company, with an area of 310,000 square feet, and a grain elevator with a capacity of 1,500,000 bushels. At Thirty-third street and Eleventh avenue is another terminal with a capacity of 1,427 cars; also two freight houses, four piers, and a storage warehouse.

The New York Central has an advantage over its competitors in that important markets have gradually developed in close proximity

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<sup>1</sup> The inadequacy of the New York Central's facilities on Manhattan Island is discussed by the city's present dock commissioner in a recent article, as follows:

"The New York Central freight system as at present operated consists of a two-track main line some 15 miles in length. It enters the borough of Manhattan across a low drawbridge at the Harlem Ship Canal with a clearance so small that it must be opened for practically all traffic. The road extends along the shore of the Hudson River to an antiquated and inadequate yard in the Manhattan Valley which attempts to serve the large and growing commercial needs of the Harlem district of Manhattan. How wretchedly inadequate that service is is testified to by all of the commercial organizations in the upper part of Manhattan. The main line continues across the surface of streets in the Manhattan Valley, with dangerous grade crossings, and runs thence along the shore front of Riverside park to Seventy-second street. The nuisance which its operation has always been to the valuable adjoining property in the Riverside section is too well known to require discussion. \* \* \* Between Seventy-second street and Fifty-ninth street the railroad maintains an extensive yard served by piers and float bridges. This yard is poorly arranged and completely outgrown, with resultant delay and inefficiency in the handling of freight. From Fifty-ninth street to Thirtieth street and between Thirtieth Street and Hudson and Varick streets the tracks run upon the public streets of the city, an intolerable condition from the standpoint of the public using the streets and almost completely destructive of efficient railroad operation. At Thirtieth street and at St. John's park the railroad maintains terminals which are equally as obsolete and outgrown as the Sixtieth street yard."

to its freight terminals on Manhattan Island. At its Thirty-third street terminal, for example, it has a warehouse with a capacity of approximately 200 cars, which is used exclusively for the delivery of hay. The larger hay dealers of the city have their places of business near this terminal. Hay is bought and sold in large quantities at this warehouse, and the Thirty-third street terminal is recognized as the principal hay market on Manhattan Island. Similarly, the New York Central's pier station at the foot of Barclay street has been recognized for many years as the apple market of New York City. Several other stations of this carrier in Manhattan are devoted to special uses. The competitive advantage which the New York Central derives from the favorable location of its terminals can not be disregarded in gauging the relative importance and influence of the several carriers serving New York harbor.

The importance of the New York Central Railroad as a factor in the general rate situation is attested by evidence showing the volume of freight which that carrier and the West Shore Railroad carry to and from New York harbor. During the calendar year 1916 those two carriers handled at their New York City stations 6,332,805 tons of freight. This figure includes only the tonnage handled at the stations of these carriers on Manhattan Island and therefore excludes all of the import and export traffic handled over the line of the West Shore Railroad through Weehawken. The figures are shown in greater detail in Appendix G. Of the total volume of freight, whether domestic, export, or import, moving between any part of New York harbor and points west of the western termini of the eastern trunk lines, the New York Central Railroad and the West Shore Railroad carry approximately 23.5 per cent.

Reference has been made briefly earlier in this report to the plans for the reconstruction and relocation of the tracks of the New York Central Railroad on the west side of Manhattan Island and for the enlargement of its piers and terminals, at a cost of over \$50,000,000. The St. John's park terminal, whose capacity is 80 cars, will be abandoned. The new terminal, which will be known as South Terminal, will have a capacity of 244 cars. The capacity of the Thirty-third street terminal will be increased from 1,427 cars to 1,588 cars. The freight station at that point will consist of two stories instead of one, and certain tracks now used for the storage of traffic consigned to St. John's park will be used for other purposes. It is estimated that these alterations will increase the efficiency of the Thirty-third street terminal by 100 per cent. The capacity of the terminal at Sixtieth street will be increased from 2,294 cars to 2,686 cars, and there will be an increase

of 33 per cent in the area of the piers at that terminal. The capacity of the terminal at One hundred and thirtieth street, which is now 470 cars, will be increased to 1,000 cars. The operations of this carrier will also be facilitated by the elevation of its tracks below Sixtieth street, where serious delays are now caused by the operation at grade in a congested district.

That these improvements will add to the influence of the New York Central Railroad is beyond question; and it is safe to say that the strategic advantage which it already enjoys by reason of the favorable location of its terminals will be increased in proportion to the increase in its terminal facilities. It is proper to add, however, that the proposed plan of improvement has not had the final approval of the authorities, and it is probable that the inadequate facilities will have to suffice for several years more.

#### RECOGNITION BY CARRIERS OF COST OF TERMINAL SERVICE.

The complainants show that the defendants themselves recognize the additional cost of the lighterage and floatage service in several ways: (a) By deducting a terminal allowance of 3 cents per 100 pounds for that service before prorating with connecting lines; (b) by paying to the auxiliary terminal companies amounts varying from 3 cents to 4.4 cents per 100 pounds when they perform that service as agents of the trunk lines; (c) by refunding to shippers 3 cents per 100 pounds for draying certain commodities from the trunk line terminals on the New Jersey shore to Manhattan, in lieu of the lighterage service which the carrier would otherwise be obliged to perform; (d) by refusing to lighter or float certain commodities, requiring the shippers or consignees to provide at their own expense for their transfer across the harbor; (e) by maintaining lower rates from Jersey City and Hoboken to territory in New Jersey within a radius of 140 miles than the rates from Manhattan and Brooklyn; (f) by maintaining higher rates between points in southern New England and points in the northern part of the state of New Jersey than the rates contemporaneously maintained between the same New England points and New York; (g) by publishing certain commodity rates to Jersey City lower than the corresponding rates to New York; and (h) by their former practice of giving rebates to New Jersey shippers. We shall discuss these subjects in the order indicated.

#### TERMINAL DEDUCTION BY TRUNK LINES BEFORE PRORATING.

Several of the trunk lines insist that connecting carriers permit them to deduct before prorating joint rates the sum of 3 cents per 100 pounds for the lighterage and floatage service when they perform



it. Shipments consigned from points in the west to Manhattan or Brooklyn and moving, for example, over the New York Central's route through Weehawken, would be carried across the harbor by the floating equipment of that carrier. Before prorating the New York Central deducts 3 cents per 100 pounds, which it credits to itself for the terminal service. The shipper pays no extra charge for the service, the cost of performing it being absorbed by the carriers out of the New York rate.

The practice of the Pennsylvania Railroad in this respect differs from that of some of the other lines. That carrier deducts 3 cents per 100 pounds before prorating on all traffic moving between points in the west and points on its lines in the New York rate group, whether it performs the lighterage service or not. On shipments to Newark, N. J., for example, where no lighterage is necessary, the terminal deduction is made as well as on shipments to Brooklyn. In the case of the Pennsylvania Railroad, therefore, the terminal deduction is not intended to represent the cost of a particular terminal service, but is rather an arbitrary sum added to that company's division of joint rates. It is explained that it is by no means an unusual practice for a carrier that has a strategic advantage to demand of its connections a somewhat greater division than is ordinarily accorded, and this additional allowance is not infrequently in the form of an arbitrary sum deducted before prorating and added to the proportion of the carrier demanding it. This practice prevails at Philadelphia and Baltimore as well as at New York, the amount of the deduction being in each instance a matter of bargain between the carriers. The trunk lines serving the port of San Francisco uniformly deduct 5 cents per 100 pounds on transcontinental traffic before prorating with connecting carriers.

#### PAYMENTS TO AUXILIARY TERMINAL COMPANIES.

Reference has already been made to the fact that a large part of the lighterage and floatage of freight across New York harbor is performed by private terminal companies, acting in that capacity as agents for the trunk lines. These companies, whose terminals are on the Brooklyn shore, not only transport freight with their own floating equipment between their own terminals and those of the railroads but they collect freight charges and remit them to the rail carriers, and they assume all responsibility for loss and damage to the freight while it is in their possession.

On all traffic originating at or consigned to points west of the western termini of the eastern trunk lines except grain the auxiliary terminal companies are paid 4.4 cents per 100 pounds for the lighterage or floatage service which they perform. On traffic originating at or consigned to points east of the western termini the allowance is 3.2



cents. Prior to our supplemental decision in *The Five Per Cent Case*, 32 I. C. C., 325, the amounts paid to the terminal companies were 4.2 cents and 3 cents, respectively. On grain the allowance is uniformly 3.2 cents per 100 pounds. These allowances are in no instances paid by the shipper, the carriers uniformly absorbing them out of the New York rate.

The largest of the private terminal companies is the New York Dock Company, whose property, as previously stated, is located on the Brooklyn shore. The plant of this company really consists of three separate terminals, the largest of which is the Fulton terminal, immediately south of the Brooklyn bridge. The next in size is known as the Atlantic terminal, on Buttermilk channel, opposite Governors Island. The smallest, the Baltic terminal, is located between the other two. The general location of these terminals is shown on the map, *ante*, facing page 650.

Like the other private terminal companies to which reference has already been made, the New York Dock Company acts as agent for the trunk line railroads in lightering and floating freight between its terminals and those of the railroads on the New Jersey shore. Its terminals occupy more than 2½ miles of the Brooklyn shore front, of which approximately 2 miles are owned by the company. The whole water front occupied by the company is improved with piers and wharves, whose total length is 9.36 miles, and which afford a combined dock space of 2,680,333 square feet, or 16.5 acres. Railroad tracks are laid on some of the piers to provide for the convenient transfer of freight from cars to vessels. Affiliated with the terminal company, but separately incorporated, is the New York Dock Railway, whose 10.42 miles of track constitute an important part of the terminal facilities. The rolling stock of the railway company consists of seven switching engines and one derrick car. The floating equipment consists of 3 tugs, 1 steam lighter, 9 car floats, and 10 barges.

The service performed by the terminal company as agent for the trunk lines consists in transporting freight across the harbor from the railroad terminals on the New Jersey shore to its own terminal in Brooklyn, a distance of three or four miles, and effecting delivery in Brooklyn. The company sends its car floats, towed by a tug, to the railroad terminal, where they are tied to the railroad float bridge. The cars are run onto the float by the railroad's switch engines, and the car floats are towed back to Brooklyn, usually to the Fulton terminal in the first instance, where they are classified for the various deliveries. Cars intended for delivery at the Fulton terminal are removed from the floats by switch engines belonging to the terminal railway company. Cars for the Baltic and Atlantic terminals are loaded on other floats and towed to those terminals.

The terminal railway company hauls the cars to the desired point of delivery, some of them to the buildings of private industries, tenants of the terminal company, others to freight stations, and still others to team tracks. Less-than-carload freight for tenants of the terminal company is usually handled at the Baltic and Atlantic terminals, and less-than-carload freight for the general public at a freight house at the Baltic terminal. The terminal company collects the freight charges from the consignee and remits to the trunk lines.

The allowances of 3.2 cents and 4.4 cents previously referred to cover not only the lighterage and floatage but all the services of the terminal railway in effecting delivery at the various terminals. The terminal company states that in 1915 the actual expense of the service which it performed for the trunk lines exceeded by \$38,000 the allowances received by the terminal company therefor, and that in 1916 the actual loss was \$51,000. The terminal company owns and operates the terminal railway company, and the latter occupies land belonging to the former upon which it pays no taxes and for which it pays no rental. The terminal company estimates that if the railway company bore a fair part of the cost of operation, including an equitable proportion of overhead expenses, the loss from the floatage and railway service would approximate \$200,000 annually; and contends that the present allowances would have to be practically doubled to insure a reasonable profit to the terminal company for the services rendered by it.

In addition to the lighterage and floatage service which they perform as agents for the trunk lines, the terminal company and the railway company own a number of industrial buildings, which they lease to tenants and which are served by the tracks of the railway company. They also own extensive warehouses, a number of freight stations, freight platforms, delivery and storage yards, team tracks, a grain elevator, and other equipment and facilities usually employed in an extensive terminal operation. The two companies employ 1,017 men, of whom 762 work in the warehouses, 80 in loading and unloading freight from cars, 79 in the terminal proper, 64 in operating the floating equipment, and 32 in railway operation. Twenty-two steamship lines sail from this terminal and 57,026 small boats, such as lighters and barges, called there to load and unload freight in 1916. The total investment of the two companies is \$30,600,000, of which \$27,037,000 consists of the investment in real estate, piers, wharves, and warehouses. In 1916 the two companies handled a total of 516,125 tons of freight, of which 80 per cent was in carloads.

The preceding description of the facilities and operations of the New York Dock Company would apply in a general way to all of

the auxiliary terminal companies. The practice of employing private terminal companies to perform the lighterage service and making allowances to them therefor, is said to have had its origin in 1884, when allowances were first made to the American Sugar Refining Company for floating carloads of sugar from Palmer's dock, Brooklyn, now a part of the Brooklyn Eastern District Terminal. The allowances of 3 cents and 4.2 cents were wholly arbitrary, but were probably intended to cover the cost of loading the cars, including dunnage, and the cost of transportation across the harbor. It is explained that the smaller allowance of 3 cents on traffic consigned to points east of the western termini was necessary because the carriers did not feel that they could absorb a larger amount on short-haul traffic. On shipments consigned to points west of the western termini the hauls are longer and the western carriers share in the absorption.

In the case of traffic to and from certain points on Long Island the trunk lines absorb not only the cost of floatage but the local rates of the Long Island Railroad from Long Island City. These absorptions are so great in certain instances that the trunk line has left hardly more than half of its revenue for the line haul. It is said, for example, that in case of a 40,000-pound shipment of a fifth-class commodity from Scranton, Pa., to Jamaica, Long Island, a New York rate point, allowances must be made not only to a private terminal company but to the Long Island Railroad, which receives the shipment at Long Island City, and hauls it to Jamaica. These allowances would amount in the aggregate to approximately \$28.80. If the shipment in question were carried by the Delaware, Lackawanna & Western Railroad from Scranton to Hoboken it would receive from the shipper \$63.20 in freight charges. After absorbing \$28.80 the Lackawanna has left only \$34.40. In this instance the absorption amounts to slightly more than 45 per cent of the freight charges. The complainants call attention to the fact that if this shipment had been consigned to Hoboken instead of to Jamaica the Lackawanna would have received \$63.20 instead of \$34.40 for its service, and it contends that no rate adjustment can be fair or equitable which requires Hoboken to pay the same rate as Jamaica under such circumstances as these. It is true that this is an extreme case, because Scranton is the most easterly point on the Lackawanna from which the rates to Hoboken are the same as those to points on Long Island, and Jamaica is the most easterly point on Long Island in the New York rate group; but it must be borne in mind that exactly the same absorptions are made on traffic to Jamaica from points west of Scranton, and that it is only because the rates from that territory are higher that the absorptions constitute a smaller proportion of

the total freight charges. On traffic to Manhattan and Brooklyn, however, which is of course much greater in volume than that to interior points on Long Island, the absorptions consist only of the payments to the auxiliary terminal companies for the floatage service. Perhaps 30,000 pounds represents a fairer average carload weight than 40,000. The allowance on such an average car would be \$9.60 on traffic originating at or consigned to points east of the western termini and \$13.20 on traffic to or from points west thereof.

#### ALLOWANCES FOR DRAYAGE AND FERRIAGE.

The tariffs of nearly all the trunk lines provide for a maximum allowance of 3 cents per 100 pounds to shippers or consignees for draying or ferrying certain commodities from Jersey City or Hoboken to points in Manhattan and Brooklyn. The allowances are made only when the rate to Manhattan and Brooklyn is the same as the rate to Jersey City or Hoboken, and only upon certification by the consignee that he has actually carried the property across the Hudson River. The commodities named in the Pennsylvania tariff, which is representative, are beer, cooperage stock, dressed meats, grapes, furniture stock in the rough, leather, lumber, and packing-house products in carloads; and butter, cheese, dressed poultry, and eggs in quantities of 15,000 pounds or more. The same tariff provides for the allowance of "free ferriage for transfer in lieu of lighterage on car shipments of celery, fresh fish, horses, live poultry, matches, and live stock." An allowance not in excess of 12 cents per ton is made to consignors or consignees within the lighterage limits for loading or unloading "lighterage free" freight when the service is performed by them.

Because of the difficulties experienced by the carriers in lightering heavy articles, they offer an inducement to shippers to provide for their own lighterage by paying them specified allowances when they perform that service. The payments vary from 50 cents to \$3.50 per ton, according to the weight of the articles, with a provision for a minimum allowance of \$20 for each delivery.

The tariffs usually provide also that certain articles in bulk, such as clay, ores, and scrap iron, may be handled westbound by the lighterage equipment of independent companies in lots of 50 tons or over from each consignor, "the allowance on such articles to be 42 cents per ton, net or gross, as rated, for service of lightering only, or 60 cents if lightering, shoveling, hoisting, and trimming in car is done at expense of the lighter." At the request of the complainants the defendants have compiled information showing the total payments to independent lighterage companies, and also the total

amounts paid to shippers or consignees for cartage and ferriage in lieu of lighterage for the calendar year 1916. The payments for drayage or ferriage in lieu of lighterage were as follows: Lehigh Valley, \$116.21; New York Central, \$13,774; Delaware, Lackawanna & Western, for ferriage \$10,243, for drayage \$5,595. The payments made to independent lighterage companies were as follows: Lehigh Valley Railroad Company, \$136,367 for 224,370 tons of freight; Erie Railroad, \$48,734 for 81,224 tons of freight; New York Central, \$217,984 for 330,695 tons of freight; Delaware, Lackawanna & Western, \$51,902 for 81,465 tons of freight; Central Railroad of New Jersey, \$327,426 for 572,658 tons of freight.

The complainants' position with regard to these allowances is best explained in their brief:

No corresponding allowances are made to New Jersey shippers. No New Jersey shipper is allowed anything from his freight rate for loading or unloading a car. No New Jersey consignee receiving freight on a dray on the New Jersey side receives any allowance whatever. This indicates as nothing else does the essential injustice of charging New Jersey shippers the cost of lighterage service which is never rendered.

The complainants do not allege that these allowances subject the New Jersey communities to undue prejudice, nor can they consistently maintain that they are excessive, because their position throughout this proceeding has been that the cost of transfer greatly exceeds 3 cents per 100 pounds. They call attention to the allowances for the purpose of showing "the difference in conditions surrounding the New Jersey and the New York traffic."

#### COMMODITIES UPON WHICH FREE LIGHTERAGE IS NOT ACCORDED.

There are a number of commodities, including powder and dynamite, coal in bulk, loose hay and straw, crockery in bulk, crude naphtha, benzine, and many others, upon which the carriers refuse to perform the lighterage service at the New York rate, because they are so hazardous or bulky that they can not be conveniently transported in lighters. They will be delivered without extra charge at any of the rail stations of the carriers on Manhattan Island or in Brooklyn, or at the terminals of the auxiliary terminal companies; or they will be floated without extra charge if a minimum of six carloads is offered. The complainants contend that the defendants' refusal to perform the lighterage service on these commodities at the New York rate is an acknowledgment on their part of the correctness of the general principle which the complainants seek to apply to all commodities, to which the defendants reply that an exception to a general rule should not be advanced as a reason for condemning the rule.



## ADDED TERMINAL COSTS REFLECTED IN SHORT-HAUL RATES.

In constructing their rates to and from points within a radius of approximately 140 miles of New York the defendants have uniformly made the rates from New York and Brooklyn higher than the rates from points in New Jersey; and this is admittedly done because of the service involved in carrying freight between the carriers' terminals on the New Jersey shore and points on the other side of the harbor. The rates for the six classes to Newark, N. J., from New York and from Jersey City as published by the Delaware, Lackawanna & Western Railroad are as follows:

To Newark, N. J., from—	1	2	3	4	5	6
New York, N. Y.....	8.4	8.4	8.4	8.4	7.4	6.3
Jersey City, N. J.....	5.3	5.3	5.3	5.3	4.2	3.2
Difference.....	3.1	3.1	3.1	3.1	3.2	3.1

The above is illustrative of the general rate adjustment in this territory. On the Lackawanna the New York rates are higher than the Hoboken rates to and from points as far west as Scranton, Pa. On the Erie the same situation prevails as far west as Great Bend, Pa., near Binghamton, N. Y.; on the Lehigh Valley as far west as Mud Run, Pa., 140 miles west of Jersey City; and on the Central Railroad of New Jersey as far as Leslie Run, Pa., 137.4 miles west of Jersey City. The Pennsylvania has a similar group, which extends on its main line as far as Eddington, Pa., 71 miles from New York. In view of this specific recognition by the defendants of the additional cost of the terminal service of the port of New York the complainants contend that it should also be recognized in the construction of rates to and from points farther distant.

The defendants contend that their policy of maintaining the same rates to New York and Brooklyn as to Jersey City and Hoboken from the territory west of the points named in the preceding paragraph is directly attributable to the influence of the New York Central Railroad. This will be made clear by an examination of the rate structure of the Delaware, Lackawanna & Western Railroad. In 1887 that carrier adopted a mileage system of class rates for general application upon its line, and those rates were adhered to except where competitive influences or state legislation required a departure from the mileage scale. The rates to and from New York were made by adding approximately 3 cents per 100 pounds to the rates to and from Hoboken. A statute of the state of New Jersey prescribes maximum rates applicable to transportation within the state. Under the mileage scale referred to the rates from Hoboken to Newark, 7.8 miles, would have ranged downward from a first-



class rate of 11 cents, but the statute prescribed a maximum rate of 5 cents. Other rates for short distances were similarly affected.

The main line of the Lackawanna extends from Hoboken through Scranton and Binghamton to Buffalo, N. Y., with several branch lines, one of which extends to Utica, and another to Syracuse and Oswego, N. Y. The main line of the New York Central also passes through Utica and Syracuse. The Lackawanna found that a rigid adherence to its general mileage scale would result in materially higher rates to Utica and Syracuse than those maintained to the same points by the New York Central Railroad, and it therefore established to and from those points rates which would enable it to meet the competition of the New York Central. This necessitated the application of rates from New York to these points not higher than those published by the Lackawanna under the mileage scale from Hoboken; and the same rates were established as far east as Scranton. The Lehigh Valley Railroad, the Erie, and the Central Railroad of New Jersey, all of which serve Scranton or the territory in its vicinity, were obliged to establish the same basis of rates as that in force over the line of the Lackawanna. Thus it came about that the policy of these lines was determined in part by the influence of the New York Central. From and to the territory west of Scranton the New York rates were made the same as the Hoboken and Jersey City rates for the same reason. The situation on the Pennsylvania was somewhat similar, except that its rates between Jersey City and Philadelphia were depressed, not by the competition of another rail carrier but by water competition.

While considering these short distance rates it may be appropriate to observe that anthracite coal from the eastern part of the state of Pennsylvania is shipped to New York harbor in greater volume than any other commodity which originates in near-by territory. It is the practice of the anthracite carriers to make their tidewater rates applicable "f. o. b. vessel," and the vessels almost invariably receive their cargoes at the coal terminals of the trunk lines on the New Jersey shore. Unlike its competitors, the Lackawanna owns and operates barges in which coal is handled by water from its terminal at Hoboken to various points in the harbor. The rates to these points are somewhat higher than the tidewater rates because of the additional cost of barging the coal across the harbor. The rate on the larger sizes of coal published by the Lackawanna to tidewater at Hoboken, for example, is \$1.40 per ton, while the rates to other points in the harbor range from \$1.85 to \$2.

The defendants point out that anthracite coal originates in the vicinity of Scranton, which, as previously explained, is on the western edge of the "short-haul territory" from which the rates to the

New Jersey cities are lower than those to New York, and they contend that it does not necessarily follow that the rates for longer distances should be similarly constructed. There are other heavy commodities, such as cement, brick, and plaster, on which the rates to Jersey City are lower, but these also move from the territory comparatively near the port. The rates on lumber from points in the southeast to New York are higher than the rates from the same territory to Jersey City. We find of record no satisfactory explanation of this adjustment.

The defendants show that it is by no means unusual to recognize the additional cost of specific terminal services in constructing rates for short distances. The rates from points in southern New Jersey to Camden, for example, are lower than the rates from the same points to Philadelphia; and the rates from points in Pennsylvania within a relatively short distance of Philadelphia are lower to that point than the rates to Camden; yet the rates from points in the west to Camden in practically all instances are the same as the rates to Philadelphia. Similarly, the rates from points a short distance west of St. Louis, Mo., are lower than the rates to East St. Louis, Ill.; yet on long-distance traffic these points almost invariably take the same rate. Several other illustrations of the same kind are shown in the record.

The practice of disregarding the cost of a specific service in constructing rates for long hauls, while including it in the rates for shorter distances, is such a common one that it may well be accepted as one of the established principles of rate making in this country. It is by no means unusual, as the present record shows, for carriers to absorb switching charges when the freight revenue is sufficient to warrant it, and the absorption tariffs usually state the minimum revenue per car which the carrier prescribes in such cases. Transit is frequently accorded without any charge in addition to the through rate when the revenue is sufficient to justify it. An extra charge for a two-line haul is frequently made when the distances are short, but for longer distances the rate is often the same for a two-line haul as for one over the line of a single carrier. The reason for this general practice is, of course, that when the hauls are long the cost of the specific terminal or switching service is spread over such great distances that the cost of that service per mile is negligible; or, in other words, that the cost of that service is so small when compared with the revenue which the carrier derives from the long haul that it can be absorbed without encroaching unduly upon the carrier's earnings.

We have frequently recognized and approved this general principle. In *Investigation of Alleged Unreasonable Rates on Meats*, 23 I. C. C., 656, 661, we held that for distances exceeding 500 miles the rates

therein prescribed should not be higher for two-line hauls than for single-line hauls; and in *Omaha Grain Exchange v. N. P. Ry. Co.*, 30 I. C. C., 572, 576, we said:

Although it is undoubtedly true that this Commission \* \* \* has recognized the justice of establishing a higher rate for a short two-line haul than for a one-line haul of equal length, we have not been disposed to consider the necessity for such higher rate as controlling in the matter of long-distance hauls.

In *The Illinois Coal Cases*, 32 I. C. C., 659, 680, we said:

On long-haul traffic the charges of the terminal association disappear in the through rate through the absorption of them by the line carriers as heretofore stated, their larger revenue on such traffic enabling this to be done. But we see of record no just basis for requiring the absorption by the line carriers of the charges of the terminal association on their short-haul traffic yielding much lower revenues.

The same thought was expressed in *Williams Co. v. V., S. & P. Ry.*, 16 I. C. C., 482, where we said:

It follows, and with particular force as applied to grouped points of origin and grouped points of destination, that differentials either above or below the rates from any given point become less and less important as the distance \* \* \* increases. Stated in other words, differentials diminish with increasing distance and vanish when the mileage on which the differential is based becomes inconsiderable in proportion to the total mileage from basing point to destination.

Taking a broad view of the general practice of all of the carriers in this respect, and of its repeated approval by the Commission as announced in the cases cited, it is clearly impossible to conclude that terminal costs must be recognized in the construction of rates for long hauls solely because they are reflected in the rates for shorter hauls. The defendants point out that so many of the rates are already lower to northern New Jersey than to New York that the cities on whose behalf this complaint is brought already have a substantial advantage. In the complainants' brief it is stated that more than half, and possibly two-thirds, of all the tonnage shipped to the port moves on rates lower to the New Jersey points than to New York. A large part of this tonnage is "tidewater" coal.

#### RECOGNITION OF TERMINAL COST IN RATES TO AND FROM NEW ENGLAND.

The rates to and from southern New England are constructed on the same principle as the rates to and from points a short distance west of New York, the rates from Manhattan and Brooklyn to points in the territory served by the New York, New Haven & Hartford Railroad being somewhat lower than the rates to and from points in New Jersey. The New Haven publishes one set of rates to its pier stations on the East River, a somewhat higher set of rates to points requiring a lighterage or floatage service, and a still higher set of rates for rail delivery at points in New Jersey. On traffic to and from New Eng-

land it may be generally said that all points from Jersey City to Philadelphia, both inclusive, are embraced in a rate group, the rates being higher than the rates contemporaneously maintained to New York and Brooklyn and other points within the lighterage limits. The rates from northern New Jersey and from New York to representative destinations in New England are shown in the following table:

*Class rates, in cents per 100 pounds.*

To—	Miles from New York. <sup>1</sup>	From northern New Jersey.						From New York, N. Y.					
		1	2	3	4	5	6	1	2	3	4	5	6
Pelham, N. Y. ....	15	31.5	26.3	20	16.8	14.7	12.6	15.4	13.2	11	8.8	6.6	6.6
Danbury, Conn. ....	64.8	37	33	27.5	21	17.9	15.8	25.3	22	17.6	14.3	9.9	8.8
New Haven, Conn. ...	72	31.5	26.3	22	17	14.7	12.6	24.2	20.9	16.5	13.2	9.9	7.7
Winsted, Conn. ....	117.5	31.5	26.3	22	17	14.7	12.6	28	24	20	15	11	10
Willimantic, Conn. ...	126	37	33	27.5	21	17.9	15.8	28	24	20	15	11	10
Wickford, R. I. ....	168	37	33	27.5	21	17.9	15.8	34.1	28.6	24.2	18.7	13.2	11
Shelburne Falls, Mass. ....	171.6	37	33	27.5	21	17.9	15.8	32	27	22	18	13	11
Boston, Mass. ....	212	37	33	27.5	21	17.9	15.8	35	30	25	20	17	15

<sup>1</sup> Distances via New York, New Haven & Hartford Railroad from Official Guide.

The additional cost of the lighterage and floatage service seems clearly to have been recognized in the construction of these rates. It will be observed, however, that the distances from New York to points in southern New England are relatively short, and we have already seen that specific terminal costs are more frequently reflected in short-haul rates than in those applying over long distances. There is merit in the contention that if the New Jersey cities have lower rates to and from territory immediately to the west, New York should have a corresponding advantage with respect to New England traffic for substantially similar distances.

The New York, New Haven & Hartford Railroad is not a party to this proceeding, nor have the other New England carriers been named as defendants; and the complainants do not seek any change in the present adjustment of rates to and from New England. Indeed, their position is that the rates to and from New England points are logically and equitably constructed; that the rates from New Jersey points to New England are properly higher than the rates from Manhattan, because of the additional lighterage and floatage cost which the carriers must bear on traffic from New Jersey; but that it is unfair to the New Jersey communities to require them to pay higher rates to New England than New York is obliged to pay, unless New York is similarly required to pay higher rates than New Jersey on traffic to and from the west.

Several instances are given of record in which the present adjustment operates decidedly to the disadvantage of New Jersey industries. At Elizabeth, N. J., for example, is a firm engaged in the

manufacture and sale of greenhouses, and there are other firms in New York engaged in the same business. These manufacturers receive a considerable part of their raw material, such as iron and glass, from the west, and as Elizabeth is in the New York rate group the rates paid by these competing companies on their raw materials are the same. In shipping the finished product to southern New England, which is one of the best markets for greenhouses, the Elizabeth firm pays rates decidedly higher than those paid by its New York competitors. The fifth-class rate from Elizabeth to Stamford, Conn., for example, is 14.7 cents, whereas the fifth-class rate from New York to Stamford is 9.6 cents; yet the New York firms are able to ship greenhouses to western points at the same rate of freight as the New Jersey firm.

Particularly unfortunate in this respect is the position of certain brewers whose plants are located at Newark, N. J. They, too, receive from the west practically all of their principal raw material, malt, and they ship beer in large quantities to points in New England. The rates on malt from the west to New York, where several breweries are located, are the same as the rates to Newark, but the rates on beer from New York to points in southern New England are materially lower than the rates from Newark. And not only does the New York brewer have an advantage over his Newark competitor in marketing beer in southern New England, but he derives an additional advantage from the fact that the rates on returned empty containers from New England points to New York are materially lower than the rates to Newark. Several other manufacturers whose plants are located in New Jersey showed that they are similarly handicapped by the present rate adjustment, but their particular situations will not be discussed in detail because they are somewhat similar to those already described.

#### LIGHTERAGE COST FORMERLY RECOGNIZED IN REBATES.

Witnesses for the complainants contend that the practice of rebating which prevailed in past years was in effect a recognition by the carriers of the cost of the terminal service. One of the witnesses stated that it was the practice of the carriers to refund to the larger manufacturers and shippers located in New Jersey "the unearned portion of the New York rate," and another witness described the refund so made as "an amount equivalent to the charge for lighterage." The defendants do not deny that such rebates were given, but little emphasis has been laid on this point by any of the parties and it is thought unnecessary to discuss it at greater length in this report.



## THE OHIO RIVER CASES.

The complainants compare the situation at the port of New York with those prevailing at the Ohio River crossings. In their opening brief we find the following:

In the series of Ohio River crossings cases the Commission has established a uniform spread of 1 cent per 100 pounds between the opposite banks of the Ohio River, this spread being made in recognition of the exceptional expense involved in the crossing of an important stream.

This is not an accurate statement of the situation. In the line of cases commonly referred to as the Ohio River cases we were called upon from time to time to remove unjust discriminations resulting from the difference in the practices of the carriers north and south of the river. The situation at Cairo, in the state of Illinois, and Paducah, in the state of Kentucky, is illustrative. The rates on the various classes and on nearly all commodities from points north of the Ohio River to Paducah, a south bank point, were 2 cents per 100 pounds higher than the corresponding rates to Cairo, a north bank point; yet the class and commodity rates to points in the south were the same from Cairo as from Paducah. In other words, the carriers, in constructing the rates to Paducah from the north, imposed an additional charge to represent the additional cost involved in crossing the Ohio River, while on traffic to the south the cost of crossing the river was disregarded. Obviously this placed the Paducah jobbers at a disadvantage in competing with jobbers at Cairo in the territory south of the river. In this case and similar cases we held, not that the carriers must impose an additional charge for hauling freight across the river, but that they must avoid unjust discrimination and undue prejudice in the construction of their rates at the river crossings. In *Paducah Board of Trade v. C., B. & Q. R. R. Co.*, 37 I. C. C., 743, at pages 750 and 751, we said:

In a number of recent cases we have had occasion to consider the rate adjustments at the Ohio River crossings. In several of them it has been shown that the rates are so constructed as to favor one point to the prejudice and disadvantage of a point on the opposite side of the river. We have uniformly held in these cases that the rates must be so made as to avoid unjust discrimination; that if a bridge toll is charged at one crossing it should be charged at all crossings; that if a bridge toll is absorbed at one crossing it should be absorbed at all crossings; and that a transit privilege granted at one point on the Ohio River should also be accorded under substantially similar conditions at a competing point. *Manufacturers and Merchants' Assn. v. A. & A. R. R. Co.*, 24 I. C. C., 331; *Same v. Same*, 25 I. C. C., 116; *Norman Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 239; *Same v. Same*, 29 I. C. C., 565; *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583; *Same v. Same*, 29 I. C. C., 593; *Metropolis Commercial Club v. I. C. R. R. Co.*, 30 I. C. C., 40; *Rates on Lumber from Southern Points*, 34 I. C. C., 952; and *Henderson Commercial Club v. I. C. R. R. Co.*, 36 I. C. C., 20; *Same v. Same*, 42 I. C. C., 196.



A careful examination of the above cases will show that we did not require in any of them a recognition of the bridge tolls in the construction of the rates before us for consideration. We required only that the unjust discrimination found to exist should be removed. Those cases differed from the case now before us in that the complainants in the Ohio River cases alleged in each instance that the rates to or from opposite crossings were constructed upon a different basis, to the undue prejudice of the complainants, whereas in the present case it is alleged that the rates to northern New Jersey and New York are constructed on the same basis and that they should be constructed upon a different basis. It is clear that the cases can readily be distinguished. It is true that in one of the cases cited above, *Rates on Lumber from Southern Points*, we approved rates on lumber from points in the south to points on the north bank of the Ohio River which were higher by 1 cent per 100 pounds than the rates to south bank points, but that situation was so different from that here presented that our findings in that proceeding can not be regarded as a precedent for granting the relief sought in the case now before us.

#### DEDUCTION OF TERMINAL ALLOWANCE UNDER MCGRAHAM SCALE.

Apparently for the purpose of showing that the rates to and from Jersey City and other points in northern New Jersey were originally made with a view to including a reasonable allowance for the terminal service, witnesses for the complainants explained in a general way the principles used in the construction of rates between points in central freight association territory and points in trunk line and New England territories.<sup>1</sup>

What is commonly known as central freight association territory includes that portion of the United States, generally speaking, lying east of the Mississippi River, north of the Ohio River, and west of a line drawn through Buffalo, N. Y., and Pittsburgh, Pa., but excluding most of the state of Wisconsin and the northern peninsula of Michigan. In constructing their class and commodity rates between points in this territory and points in the east the carriers have divided central freight association territory into a number of rate groups of various sizes and irregular in outline.

When the interterritorial rates were originally established these rate groups did not exist, but there were a large number of so-called "basing points" throughout the territory, the rates to and from which bore a more or less definite relationship to the rates between Chicago and New York. The first definite basis for the construction of rates to and from central freight association territory was adopted in 1876, when specific percentages of the Chicago-New York rates

<sup>1</sup> This matter is fully discussed in *Michigan Percentage Cases*, 47 I. C. C., 409, recently decided.

were assigned to a number of basing points in that territory, the percentages being determined to a large extent by relative distances. In 1879, for the purpose of increasing the carriers' revenues, the percentages to be assigned to the respective basing points were determined by a somewhat different method. An assumed rate of 25 cents per 100 pounds<sup>1</sup> from Chicago to New York was taken as the basis. From this rate the sum of 6 cents was deducted to cover terminal expenses at both ends of the haul, leaving 19 cents as representing the part of the assumed rate to be applied to the line haul. The 19 cents was then divided by 920 miles, which was then the distance over the lines of the Pennsylvania Railroad from Chicago to New York, giving a rate of 0.0206 cents per 100 pounds per mile for the haul from Chicago to New York. To determine the percentage which any point should take its mileage to New York was multiplied by 0.0206 cents, the terminal allowance of 6 cents added back, and the result divided by 25. For example, Xenia, in the state of Ohio, was 700 miles from New York. If 700 is multiplied by 0.0206 cents, the result is 14.42 cents, and if 6 cents is added the sum is 20.42 cents, which is 81.7 per cent of the assumed rate of 25 cents from Chicago to New York. Under a generally recognized rule for the disposition of fractions this was made 82 per cent, and the rates from Xenia to New York were accordingly made 82 per cent of the Chicago-New York rates. The rates from other basing points were determined in a similar manner. *Saginaw Board of Trade v. Grand Trunk Ry. Co.*, 17 I. C. C., 128.

Through a gradual and interesting process of development which it is unnecessary to describe in this report, the rates to and from these basing points were extended from time to time until large rate groups were constituted. What is known as the 100 per cent group on east-bound traffic embraces nearly half of the state of Indiana and a part of the state of Illinois. The 110 per cent group embraces nearly half of the state of Illinois. The rest of central freight association territory is similarly divided into rate zones which vary greatly in size and shape, the percentages ranging from 60 per cent in the Pittsburgh group to 120 per cent in the southern part of the state of Illinois. Most of the groups are somewhat smaller than those described, the state of Michigan alone containing 14 groups.

The point emphasized by the complainants' witnesses is that in the construction of all these rates recognition was given to terminal costs by the inclusion of an allowance of 6 cents for the terminal service; and the conclusion is reached, as we understand it, that the defendants' class and commodity rates, including those to and from

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<sup>1</sup> It has been commonly supposed that this was the sixth-class rate between Chicago and New York at that time, but it has recently been shown, in another case now pending before the Commission, that no sixth-class rate was published at that time. It happens that the fourth-class rate was then 25 cents, but that figure seems to have been arbitrarily selected, without regard to any of the class rates then in effect.

northern New Jersey, contain an allowance for the terminal service; and that inasmuch as the cost of delivery in New Jersey is in some instances less than the cost of effecting delivery in New York, it is unfair to the cities of New Jersey to include in their rates the same terminal charges as are used in constructing the rates to New York. This conclusion is not supported by the evidence. There is no evidence whatever to show that the basic rates from Chicago to New York include any allowance for terminal services. It is testified, on the contrary, that they were established as a result of the competition between the rail lines and the boat lines operating through the Erie Canal, and of competition between the railroads themselves. We have already observed that the rates of the New York Central were made without regard to the cost of lighterage, because it performed no lighterage service, and that several of the other trunk lines were compelled to disregard the terminal cost because of the necessity of meeting the New York Central's competition. It is doubtless true that most rates in this country, whether the McGraham formula was employed in their construction or not, were made with a view to including remuneration to the carriers not only for the line haul, but for the ordinary terminal services at point of origin and at destination. It will lead to clearness of thought in the case now before us if we disregard the McGraham formula entirely, for it plainly has no direct application to the issues here presented.

#### THE CONSTRUCTION OF RATES BY GROUPS.

The complainants having taken the position that the rates to and from northern New Jersey should be lower than the rates to and from Manhattan and Brooklyn because the lighterage and floatage service involves an additional cost, the defendants have endeavored to show at some length that specific cost of service has been commonly disregarded in the construction of rates throughout official classification territory. For that purpose evidence has been submitted showing in detail the extent of the various rate groups which the carriers have recognized for many years in constructing their rates in this territory. On both eastbound and westbound traffic the territory east of Buffalo and Pittsburgh has been divided for rate-making purposes into a number of rate groups of considerable size. The one with which we are particularly concerned in the present proceeding is the New York group, which with respect to eastbound traffic includes, generally speaking, all points in the northern half of the state of New Jersey; a few points west of the Delaware River in the state of Pennsylvania; all of New York City, including points on Long Island as far east as Flushing and Jamaica; and a large portion of the southeastern part of the state of New York, including points on the New York Central Railroad and the West Shore Rail-

road almost as far north as Albany, N. Y. North and east of this group is the Boston rate group, which includes practically all points in the states of Massachusetts, Rhode Island, and Connecticut, points in the state of Maine as far north as Portland, and many points in the states of New Hampshire and Vermont.

South and west of the New York groups is the Philadelphia group, which includes, generally speaking, points east of the Susquehanna

River in the state of Pennsylvania; points in the northern part of the state of Delaware; points in Maryland on the line of the Philadelphia, Baltimore & Washington Railroad and the Baltimore & Ohio Railroad almost as far south as Baltimore; and a few points in the states of New York and New Jersey. The extent of the Philadelphia and New York rate groups is indicated in a general way on the accompanying map.

South and west of the Philadelphia group is the Baltimore group, which also covers an extensive territory. The central part of the state of New York is similarly divided into four large rate groups, known as the Albany, Utica, Syracuse, and Rochester groups, each embracing a large number of points; and there are a number of other groups of like character west of the territory already described which it is not thought necessary to outline.

The rates to and from these rate groups bear a fixed relationship to each other. The rates from the west to points in the Boston group, for example, are higher by fixed arbitraries than the rates to points in the New York group. As has already been explained in connection with the discussion of the port differentials, the rates on all classes and on most commodities to Philadelphia and points in the Philadelphia group are 2 cents per 100 pounds lower than the rates to New York; and the rates to Baltimore are uniformly 1 cent lower than the rates to Philadelphia.<sup>1</sup> Similarly, the rates to and from points in the other groups bear a fixed relationship to the rates to and from New York. Points not included in any of the above groups are usually given rates higher by fixed arbitraries than the rates to or from the nearest group. Thus, the rates to and from points in southern New Jersey are higher than the Philadelphia rates by fixed arbitraries, and the rates to and from points on the peninsula between Chesapeake Bay and the Atlantic Ocean are higher by fixed amounts than the rates to and from Philadelphia or Baltimore.

The complainants direct our attention to the fact that the Susquehanna River marks in a general way the western boundary of the Philadelphia rate group, and that similarly the Delaware River may be considered the eastern boundary of the group; and they contend that a like observance of geographical conditions would seem logically to lead to the recognition of the Hudson River as the eastern boundary of the group in which New Jersey is located. We are also asked to note that the rates to points in the Philadelphia group are uniformly 1 cent higher than the rates to points in the Baltimore group, whereas the rates to points in the New York group exceed by 2 cents the rates to points in the Philadelphia group. This difference is attributable, as previously explained, to the port differentials, and to their application to the domestic rate adjustment.

A study of these groups shows that in constructing them the carriers have disregarded great differences in distance. If cost of service were the only element to be considered in constructing rates,

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<sup>1</sup> On westbound traffic the Philadelphia differentials on the six classes are, in cents, as follows: 0, 2, 2, 2, 2, 2. The Baltimore differentials are 8, 8, 8, 8, 8, 8.

it is obvious that the rates from points in the west to a point just east of Harrisburg should be lower than the rates to Philadelphia; that the rates to Trenton should be lower than the rates to New York; and that the rates to Bridgeport should be lower than the rates to Boston. But the rates have not been constructed on any such principle, and the defendants contend that the complainants should not be heard to say that the rates to and from northern New Jersey are unlawful solely because the carriers have disregarded the additional cost of lighterage and floatage in constructing their rates to and from Manhattan and Brooklyn.

The defendants have also submitted evidence with respect to the division of central freight association territory into a number of large rate groups, but that matter has already been discussed; and although a careful examination of those groups seems clearly to support the defendants' contention that notable differences in distance have commonly been disregarded in constructing the rates in this territory, it is unnecessary to define the groups or to dwell at length upon their history.

As previously stated, the complainants asked at the hearing that the cities and towns in northern New Jersey be placed substantially upon the Philadelphia basis. If the Philadelphia rates were accorded to this territory, the Philadelphia rate group would be extended from the Susquehanna River to the Hudson River.<sup>1</sup>

If the Philadelphia rates applied at Weehawken, the West Shore Railroad could hardly maintain higher rates at intermediate points on its line south of Albany; and inasmuch as it is the policy of the New York Central Railroad to apply the same rates to points on the east bank of the Hudson River as to points on the west bank, it is not improbable that the Philadelphia rates would be extended to points on the main line of the New York Central on the east side of the river. Since there is a fixed relationship between the Albany and New York rates it is possible that this would cause a disturbance in the rates to and from points in the Albany group, and in the other groups to the west, and the carriers contend that the rates to points in New England might also be affected. Inasmuch as the Baltimore & Ohio Railroad reaches Staten Island with its own rails, and there-

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<sup>1</sup> The difficulty in contending on the one hand that the rates should be constructed with more or less strict regard to the cost of service, and on the other hand that northern New Jersey, in spite of its greater distance, should take the same rates as points in the Philadelphia group, is illustrated by the following excerpt from the record:

"Mr. TROUP. The New York business is more expensive to the railways.

"Mr. PATTERSON. That being so, should Trenton and Jersey City take the same rate? Why should Trenton be burdened with the expense of hauling traffic from Trenton to Jersey City?

"Mr. TROUP. Oh, you have got to establish a zone somewhere."

47 L. C. C.



fore without an additional expense for lighterage or floatage, it would seem logical to extend the Philadelphia rates to Staten Island. Indeed, the Staten Island Civic League, which was permitted to intervene as a party complainant, states in its petition that "the interests represented by it are in exactly the same relative location and have exactly the same railroad conditions and rates as the New Jersey shippers," and that "any finding by the Commission in favor of the contention of the original complainant in this action should also include and apply to shippers and consignees and the railroads doing business on Staten Island." As previously stated the carriers concede that Staten Island should take the same rates as northern New Jersey. Staten Island, however, is a part of the city of New York, and the possibility of having the Philadelphia rates extended to a part of the city, while higher rates are maintained to other parts of the city, is naturally not regarded with equanimity by those in New York who are endeavoring to develop the port as an organic whole.

The practice of embracing many points within the same group or zone has been so generally adopted by the carriers and so frequently recognized as proper by this Commission that its general propriety can hardly be challenged. Not only does this practice greatly simplify the publication of tariffs, to the convenience of both the carriers and the public, but the application of a common rate to a number of points in the same general territory effects an equality of opportunity which is usually most desirable; and this is particularly true where the points in question produce and ship the same commodity or derive their raw materials from the same sources. Producers in all parts of the port of New York are manufacturing goods for sale in common markets throughout the world.

Actual distances and actual costs are commonly disregarded in the construction of rate groups, and so long as their general propriety is recognized it is of course impossible to entertain the view that a rate is unlawful solely because it does not reflect with approximate accuracy the actual cost of performing the transportation service.

In *Stiritz v. N. O., M. & C. R. R. Co.*, 22 I. C. C., 578, 581, we said:

The Commission has repeatedly recognized and approved the grouping of points, within reasonable limits, for the purpose of making rates, and it will not disturb such groupings in the absence of proof that as to particular points in a zone the adjustment results in unreasonable rates or undue prejudice and disadvantage.

The chief justification for a rate zone is that it places all producers on the same footing in a given market. *Ferguson Saw Mill*

47 I. C. C.

*Co. v. St. L., I. M. & S. Ry. Co.*, 18 I. C. C., 396, 398. Blanket or group rates in many cases are of great advantage to the public without serious injustice to any interest, though there is of necessity more or less disregard of distance and varying degrees of inequality. *Chicago Lumber & Coal Co. v. T. S. Ry. Co.*, 16 I. C. C., 323, 334.

Grouping or blanket arrangements are of great advantage to the public, and, once established, groups should not be lightly or unnecessarily disturbed. *Clyde Coal Co. v. P. R. R. Co.*, 23 I. C. C., 135, 138. But the Commission has never approved a group rate that resulted in undue prejudice to any part of the group; and whether or not the grouping of points constitutes undue or unjust discrimination must be determined from the facts in each case. *Southwestern Missouri Millers Club v. M., K. & T. Ry. Co.*, 22 I. C. C., 422, 425; *Muskogee Traffic Bureau v. A., T. & S. F. Ry. Co.*, 17 I. C. C., 169, 173.

The New York and Philadelphia rate groups have remained practically the same for 30 or 40 years, except for the addition of some points, which did not change materially their general outline.<sup>1</sup> We have already seen that in a commercial and industrial sense "New York" embraces a territory much greater in extent than the city of that name; it includes all the great metropolitan district previously described. By a process of natural evolution the rate structure, as it developed, accommodated itself in a general way to the commercial and industrial conditions, and the inclusion of the manufacturing cities of northern New Jersey in the New York rate zone was the logical, if not inevitable, result of economic conditions. Historically, commercially and industrially the cities of northern New Jersey within the metropolitan district constitute a part of New York, and the request now made on behalf of these cities that they be lifted out of the New York rate zone and transferred to the Philadelphia zone seems anomalous. Neither historically nor commercially do they constitute a part of the Philadelphia district.

#### ABSORPTION OF COST OF TRANSFER AT OTHER POINTS.

In further justification of their practice of applying a common rate to all parts of the port of New York the defendants show that there are many instances in which the additional cost of transport-

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<sup>1</sup> Thirty years ago the territory in northern New Jersey west of Newark and Paterson took rates higher by at least 3 cents per 100 pounds on eastbound traffic than the rates to New York, and the New York zone did not include points on Long Island or on Staten Island.

47 I. C. C.

ing freight across a river or bay is disregarded in constructing rates. The situation at Philadelphia and Camden, for example, is somewhat similar to that at New York. The Pennsylvania Railroad is the only carrier having a direct rail service between Camden and Philadelphia, which lie on opposite sides of the Delaware River. The rails of the Philadelphia & Reading Railway and the Baltimore & Ohio Railroad terminate on the Philadelphia side of the river, and all freight carried by those roads to or from Camden must be transported in lighters or car floats across the river. On traffic to and from points in the west Camden takes the Philadelphia rates on all classes and on practically all commodities.

In certain respects the Philadelphia-Camden situation differs from that at the port of New York. The volume of traffic moving between Philadelphia and Camden is of course materially smaller than that transferred between points on the west side of New York harbor and Manhattan and Brooklyn. There are no auxiliary terminal companies at the port of Philadelphia, acting as agents of the trunk lines in lightering and floating freight, such as those at New York. The number of steamship lines having regular sailings from New York greatly exceeds the number sailing from Philadelphia, and at the latter port most of the vessels sail from the Philadelphia side of the river. In spite of these differences, however, it is clear that the situations are not so dissimilar as to make the comparison valueless. If the rates to and from Manhattan should properly be higher than the rates to and from Jersey City because of the cost of the harbor transfer, it would seem that the rates to and from Camden should likewise be higher than the rates to and from Philadelphia because of the corresponding cost there incurred.

The defendants also show that Pittsburgh and Allegheny, Pa., invariably take the same rates on long distance traffic; that Wheeling, W. Va., and Bellaire, Ohio, are also grouped; that Norfolk and Portsmouth, Va., usually take the same rates; and that a similar situation exists at Galveston and Port Bolivar, Tex.; at St. Louis, Mo., and East St. Louis, Ill.; and at some of the Ohio River crossings. These comparisons are somewhat less helpful than the other because the conditions are so obviously different from those at the port of New York. A situation like that at Pittsburgh and Allegheny, for example, where there is a direct rail connection between the points and where no freight is transferred by lighter or car float, can hardly be regarded as analogous to the conditions prevailing in New York harbor. Comparisons of this character are helpful only to the extent that they show that it is the practice of the carriers throughout the country to apply the same rates on long distance traffic to

and from points located on opposite sides of a river or harbor, regardless of the nature of the facilities employed in transferring freight between them.

The situation at San Francisco is strikingly similar to that at New York. The port of San Francisco is divided into two parts by the waters of San Francisco Bay. On the east side of the bay, almost directly opposite San Francisco, are Richmond, Berkeley, Oakland, and Alameda. Just as the terminals of most of the trunk lines serving the port of New York are located on the New Jersey shore, so at San Francisco the terminals of a number of the carriers are located on the eastern side of the bay. The Atchison, Topeka & Santa Fe Railway has a terminal on San Pablo Island, near Richmond, and the Southern Pacific and Western Pacific have terminals at Oakland. Just as the New York Central reaches Manhattan Island with its own rails from the north, so the Southern Pacific reaches San Francisco with its own rails by way of the Dumbarton cut-off. As at the port of New York the steamship lines usually dock on the Manhattan or Brooklyn side of the harbor, opposite the terminals of the rail lines, so at San Francisco harbor they dock at San Francisco opposite the railroad terminals. It is necessary, therefore, to float a large amount of traffic for a distance of approximately 5 miles across San Francisco Bay between the railroad terminals and the piers in San Francisco. All the freight ferried across the bay is handled in car floats, lighters not being employed.

One important difference between the New York and San Francisco situations is that there is no industrial district in the vicinity of San Francisco at all comparable with that in northern New Jersey. Approximately 75 per cent of the total traffic to and from San Francisco is handled over the all-rail route of the Southern Pacific.

All class rates and practically all commodity rates between points in the east and Oakland are exactly the same as those between the same eastern points and San Francisco, the rail carriers disregarding the cost of transferring freight across the bay. There is a territory near Oakland, very limited in extent, from which the rates to that point are lower than the rates to San Francisco, but with that comparatively unimportant exception the same rates apply to and from points on both sides of the harbor.

#### THE BUFFALO-ERIE SITUATION.

Erie, in the state of Pennsylvania, is located in what is known as percentage territory; that is, the territory from which the rates are

constructed on fixed percentages of the Chicago-New York scale, as previously explained. In the construction of rates to and from this territory, including Erie, the Philadelphia rates are made lower than the New York rates. Buffalo, on the other hand, is not in percentage territory, and the class rates from that point to Philadelphia are the same as those to New York and lower than those from Erie. A reduction in the rates from Erie to Jersey City, as requested by the complainants, would disturb the relationship between Erie and Buffalo; and if the rates from Buffalo to northern New Jersey were reduced the present equality between the rates to northern New Jersey and the rates to Philadelphia could be preserved only by reducing the latter. This is made clear in the following table:

*Class rates, in cents per 100 pounds.*

From—	To—	1	2	3	4	5	6
Erie, Pa.....	Philadelphia, Pa....	41.3	35	29.5	20.1	16.9	12.8
Do.....	New York, N. Y....	47.3	41	31.5	22.1	18.9	15.8
Buffalo, N. Y.....	Philadelphia, Pa....	41.3	35	29.5	20.1	16.9	12.8
Do.....	New York, N. Y....	41.3	35	29.5	20.1	16.9	12.8
Philadelphia, Pa....	Erie, Pa.....	43.1	35	29.5	20.1	16.9	12.8
Do.....	Buffalo, N. Y.....	41.3	35	29.5	20.1	16.9	12.8
New York, N. Y.....	Erie, Pa.....	47.3	41	31.5	22.1	18.9	15.8
Do.....	Buffalo, N. Y.....	41.3	35	29.5	20.1	16.9	12.8

It is not improbable that a change in the Buffalo rates would disturb the rates from the groups east of Buffalo; and that the Canadian lines, which have consistently refused to establish lower rates to Philadelphia than to New York, would be embarrassed by a finding that both Jersey City and Philadelphia should take lower rates than New York.

#### NEW JERSEY'S INDUSTRIAL PROGRESS.

The complainants have contended throughout this proceeding that the people of the northern part of the state of New Jersey have been unduly prejudiced by the present rate adjustment, and that the industrial development of the state has been retarded by the alleged unlawful practices of the defendants. The present adjustment of rates is characterized in the complaint as "the unjust burden now imposed upon New Jersey." The complainants' conviction that the manufacturers of New Jersey have been greatly handicapped by the freight rates is best indicated by the testimony of one of their principal witnesses, the secretary of the Newark Board of Trade, who has been in close touch with the situation for years:

Mr. McCARTER. What has been the actual effect (of the present rate adjustment), in your experience and judgment, after this investigation of years of this subject, upon our own industries generally?

Mr. REILLY. Judging from the numerous complaints received, and the urgency of manufacturers and others to have some action taken whereby the present day scale of rates could be adjusted, it has had an ill effect upon industry, and there is no doubt whatever of the effect it has had in retarding the development of the whole area of northern Jersey. We have seen the Brooklyn water front built up; \* \* \* we have seen great industries located and developed there, attracting a vast population, while, at the same time, the water front of New Jersey has remained dormant.

It is proper to observe that with the exception of general statements of this character, which statistics show to be of doubtful accuracy, there is no evidence of record showing that the rates assailed have operated to the prejudice of New Jersey shippers. It is true that on shipments to New England the rate structure is not favorable to the complainants, and that it gives New York an advantage, but the rates to and from New England are not in issue in this proceeding. The industries of New Jersey have prospered under the rate adjustment which they attack. Their complaint is, not that the present adjustment gives an advantage in rates to New York shippers, but that it does not give in all instances to New Jersey shippers the advantage over their New York competitors which they claim as their due.

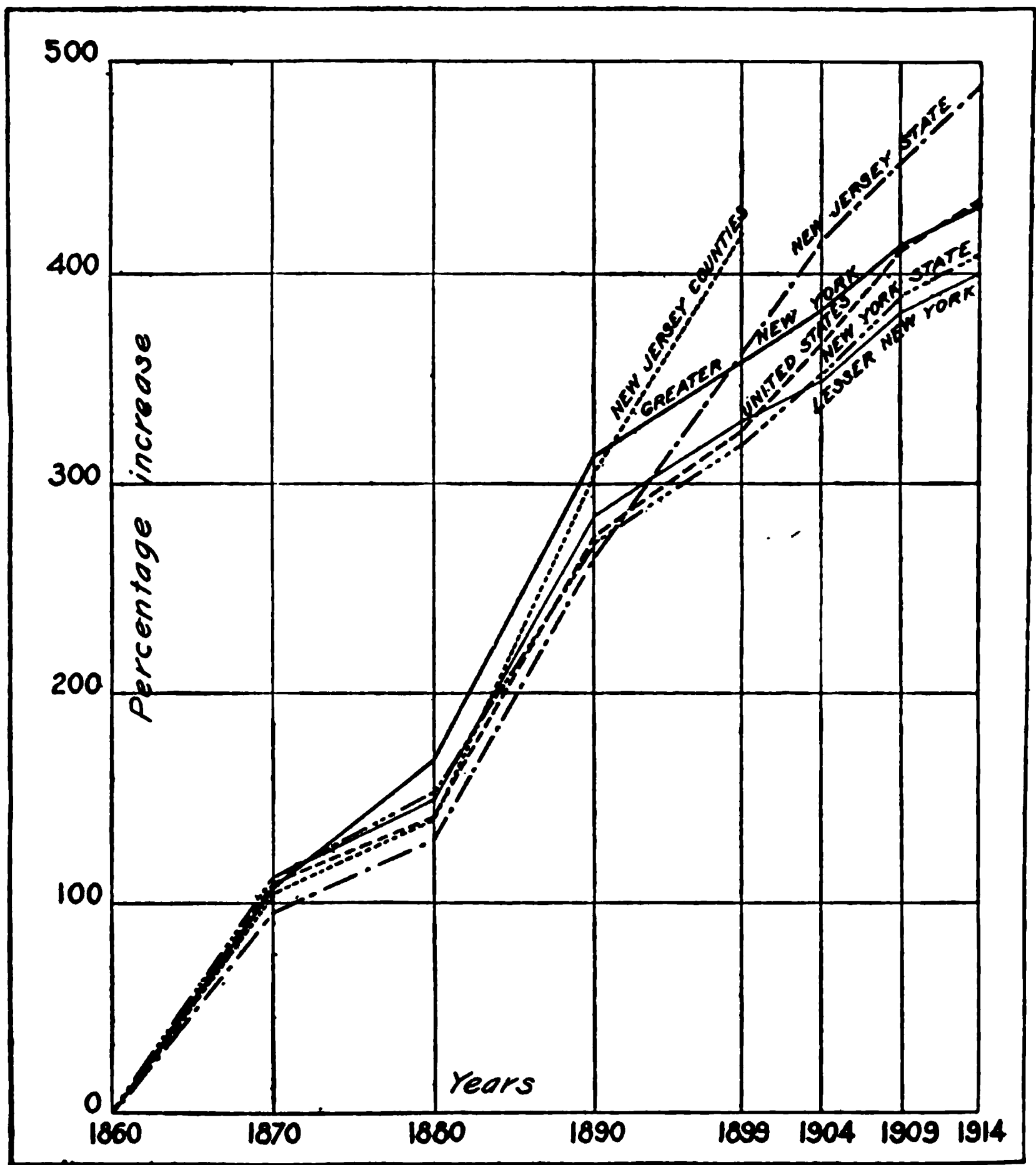
For the purpose of determining as accurately as possible the relative progress of New York and the communities of northern New Jersey the state of New York requested its engineering department to collect and tabulate information showing separately the growth of the United States, the state of New York, the state of New Jersey, the counties of northern New Jersey, the principal cities of northern New Jersey, lesser New York, including Manhattan and the Bronx, and Greater New York, including the whole city. The information collected, which has been introduced in evidence in this proceeding in the form of statistical tables and charts, shows the growth in population, in net assessed valuation, in the number of persons engaged in manufacturing, in the capital invested in manufacturing, and in the value of manufactured products. It would be inadvisable to reproduce all these statistics in this report, but a few of the charts will show the general situation.<sup>1</sup>

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<sup>1</sup> The record contains other evidence showing the industrial progress of New Jersey, but as it would tend merely to substantiate what the charts show it will be omitted from the report. It may be well to observe, however, that the growth of the commutation traffic on typical New Jersey lines has been substantially as great as that of the New York lines with the exception of the Long Island Railroad. The figures are shown in Appendix H. The contention is that the increase in the commutation traffic is fairly indicative of the extent of suburban growth.



The following chart shows how the percentages of increase in population in the state of New Jersey and in the northern counties of the state<sup>1</sup> compare with the growth in Greater New York, in the state of New York, and in the United States:

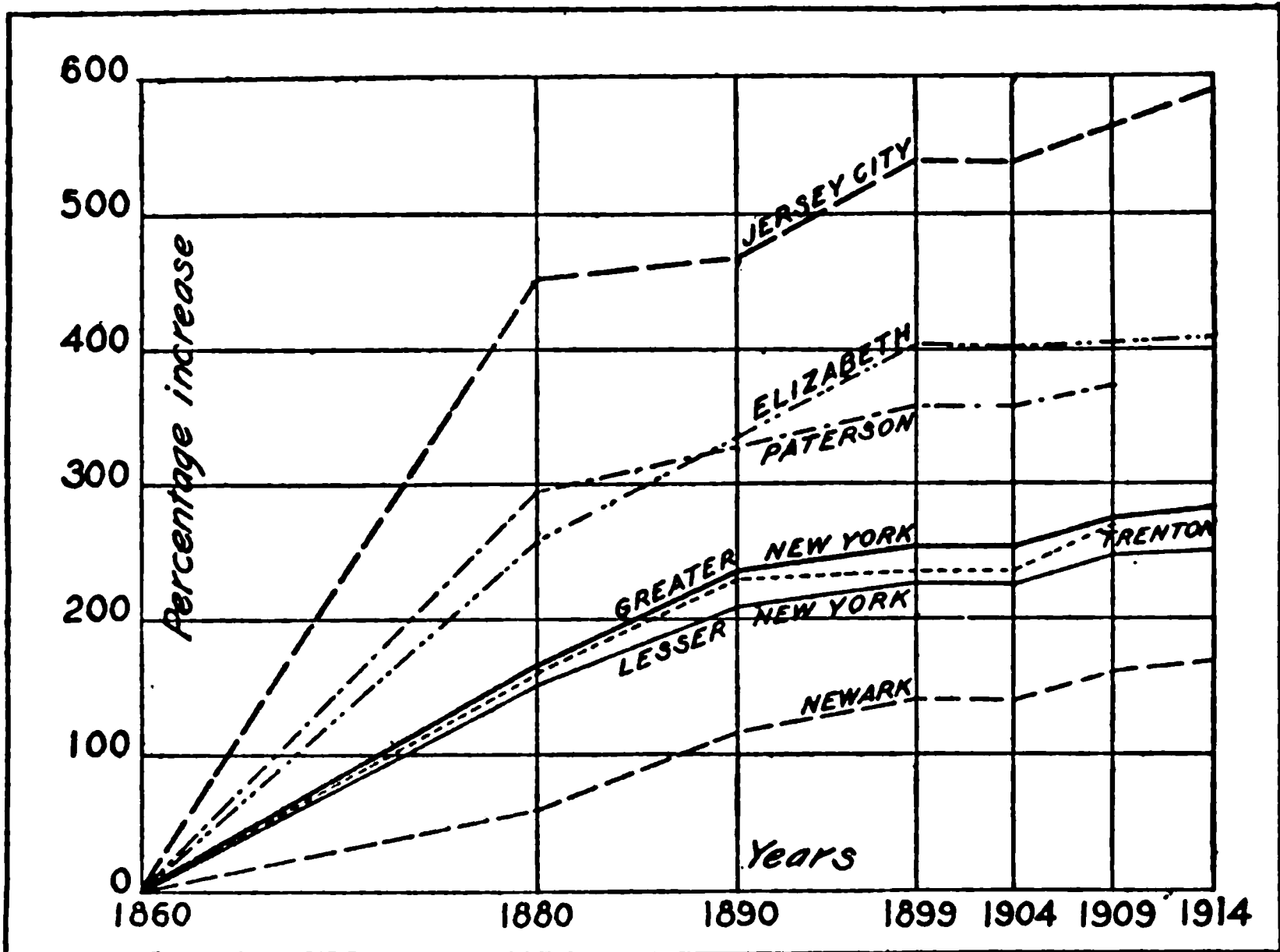


Relative increase in population.

<sup>1</sup>The counties included in these statistics are Union, Essex, Passaic, Bergen, and Hudson, which constitute the greater part of the industrial district of northern New Jersey.

It may be proper to state that the figures upon which these charts were based are filed in the record, and that their accuracy has not been questioned.

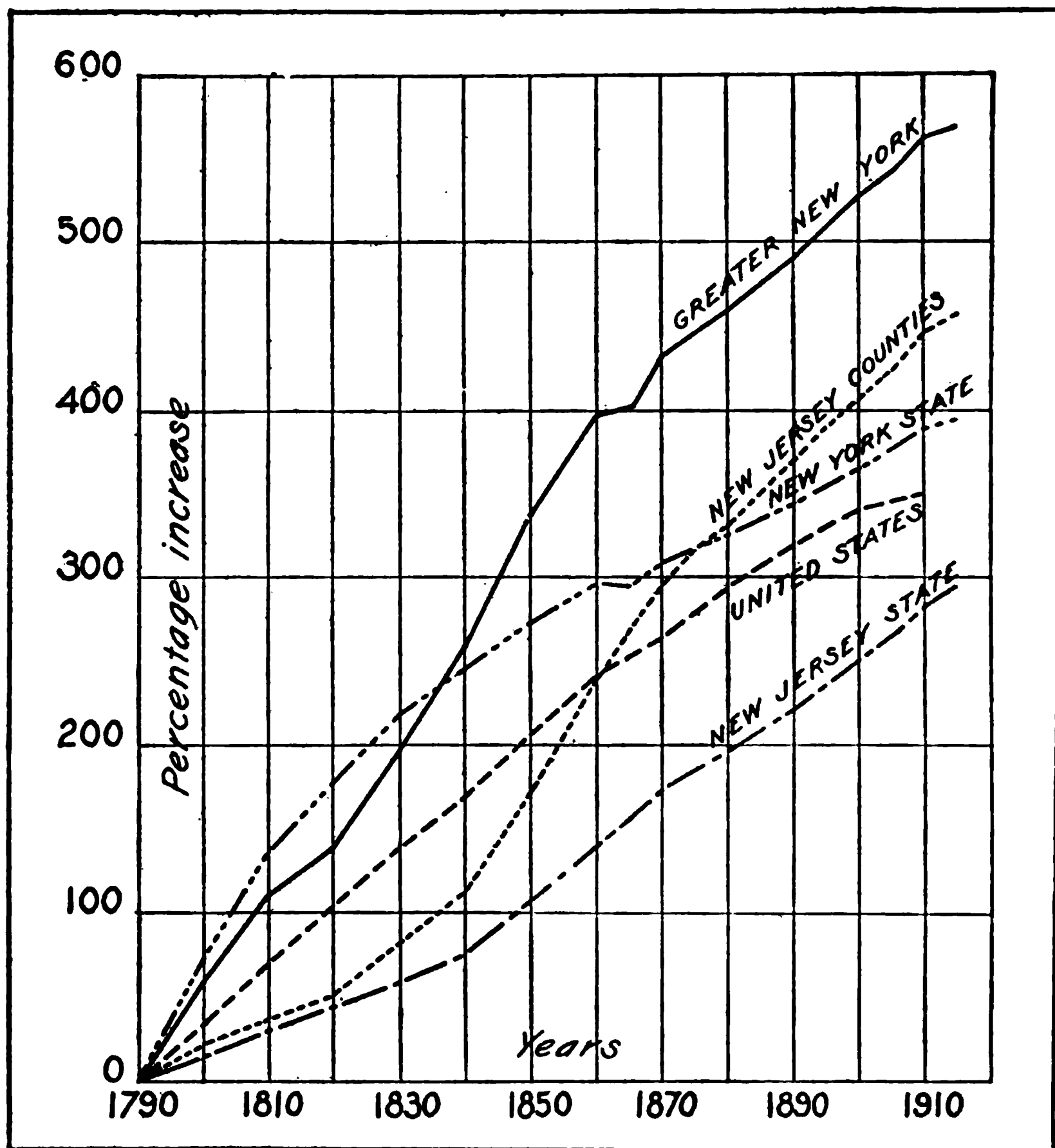
The following chart shows how the percentage of increase in the number of persons engaged in manufacturing in some of the prominent cities in New Jersey's industrial district compares with the growth in Greater New York and in lesser New York:



Relative increase in number of persons engaged in manufacturing.

47 I. C. C.

The following chart shows how the percentage of increase in the amount of capital invested in manufacturing in the state of New Jersey and in the northern counties of the state compares with the percentage of increase in lesser New York, Greater New York, the state of New York, and the United States:



Relative increase in capital invested in manufacturing.

It is unnecessary to dwell at greater length upon the story of New Jersey's progress.<sup>1</sup> It suffices for the purpose of this report to state

<sup>1</sup> A description of New Jersey's rapid growth from a very practical point of view was given by the general freight agent of the Lackawanna, who told of the many improvements his company has been called upon to make in the industrial section of the state. Among other things he said: "The industrial business on our line within a radius of 25 miles of Hoboken has trebled within the past 15 years. The second fact in connection with the industrial development is covered by the very considerable expenditures made by our company in the past 15 years for the rebuilding of practically every station, freight house facility, freight houses and team tracks that we have within a radius of 30 miles of New York. Practically every one of them has been rebuilt and enlarged, owing to the increasing traffic demands."

that other comparisons similar to those given in the preceding charts lead to the same conclusion—that the progress of the state of New Jersey, and of the cities and counties in the northern part of the state, both individually and collectively, has been as favorable, generally speaking, as the progress of the city of New York, of the state of New York, or of the country as a whole.

#### RECIPROCAL SWITCHING.

Earlier in this report reference was made to the fact that the waters of New York harbor may be regarded as “an interior belt line” whereby shippers in many parts of the harbor are given access to the terminals of all the trunk lines. Shippers in New Jersey, on the other hand, usually enjoy the service of only one carrier, although in several instances the rails of the competing trunk lines are connected in such a way that the same shipper could be served by several carriers if reciprocal switching arrangements were established, and the complainants ask that the trunk lines whose terminals are located on the New Jersey shore be required to provide such switching arrangements at Jersey City, Hoboken, and Weehawken.

The location of the railroad terminals on the New Jersey shore is shown on the large map near the beginning of this report. All the trunk lines except the Delaware, Lackawanna & Western are connected with each other by a line of railroad which runs in a north and south direction from Black Tom Island to Weehawken. The southern part of this railroad, which is designated “the connecting railroad,” was formerly known as the National Docks Railway. It is now owned by and operated as a part of the Lehigh Valley Railroad. The northern part, which was formerly known as the New Jersey Junction Railroad, is now owned by the West Shore Railroad and operated by the New York Central as a part of its system. It is unnecessary to describe in detail the course of the connecting railroad. It suffices for the purposes of this report to observe that it connects physically with the Central Railroad of New Jersey, the Pennsylvania, and the Erie, and as it is virtually a part of the Lehigh Valley and the West Shore it joins together the terminals of all five trunk lines. It runs under the Lackawanna tracks in such a way that a physical connection would hardly be practicable. The connecting railroad is used to some extent for the movement of through traffic between a few of the trunk lines, and the complainants contend that it could likewise be employed to advantage as a belt line for the interchange of freight under reciprocal switching arrangements.

With respect to westbound traffic the complainants seek the establishment of such switching arrangements as will give the Jersey

City shippers access to all the trunk lines. They seek to obtain for a shipper located on the line of the Pennsylvania in Jersey City, for example, the advantage of the service of the other carriers, such as the Lackawanna and the Erie, by requiring the Pennsylvania to publish a reasonable switching charge, under which the cars of the other lines would have access to the industries located on the Pennsylvania. In many instances such an arrangement would have the effect of short hauling the Pennsylvania. The plant of Colgate & Company, manufacturers of soaps and perfumes, is located on the tracks of the Pennsylvania in Jersey City. A carload of soap shipped by this company to a consignee in Buffalo can be hauled the whole distance by the Pennsylvania. If the switching arrangements requested by the complainants were established, Colgate & Company could require the Pennsylvania to switch the car a mile or two to a junction with the Erie, from which point the Erie would haul it to Buffalo. Such an arrangement would short haul the Pennsylvania quite as effectively as the establishment of a through route and joint rate over that route, and in requiring such a service we would simply accomplish indirectly what is expressly prohibited by the act, namely, requiring a carrier to participate in a through route embracing substantially less than the entire length of its line between the points in question. It can not be denied that the establishment of such reciprocal switching would be of benefit to the people of Jersey City and Hoboken, but the Commission derives its authority from the act to regulate commerce, and it can afford no relief which is not authorized therein either expressly or by direct implication.

The defendants show, furthermore, that in most instances joint through rates are already in effect between Jersey City and points in the west; and that where they do not exist switching charges are sometimes published which have the effect of giving one carrier access to the terminals of another. Thus, the Erie publishes a charge of \$10 for switching interstate traffic for the West Shore Railroad, and the latter carrier absorbs the switching charge. Similarly, the Pennsylvania publishes switching charges for its service in switching interstate shipments to and from its connection with the West Shore. Joint through rates are published between points on the Lehigh Valley in Jersey City and points on the West Shore and the New York Central; also from points on the Central Railroad of New Jersey to points on the West Shore and New York Central, the connecting railroad being used in this instance as an intermediate carrier.

Similarly, the Lackawanna and the Erie, which have a connection at Bergen Junction, near Hoboken, publish switching charges to and from that junction. The Lackawanna also connects with the Pennsylvania at Kearney Junction, near Newark, and joint through rates

are published between all points on the Lackawanna and all points on the Pennsylvania, including Hoboken and Jersey City. The Lackawanna does not connect near the New Jersey shore with the Lehigh Valley or the Central Railroad of New Jersey, but joint rates are published on commodities which move in any volume, the cars being transferred from one terminal to the other on floats. Joint class rates are also published between points on the Lackawanna and points on the Lehigh Valley and the Central, applicable via Phillipsburg and Lake Junction, N. J., junction points 77 miles and 75 miles, respectively, west of Jersey City. The evidence supports the statement made by the general freight agent of the Lackawanna that this company and its connections have established all the rates reasonably necessary for the accommodation of the through traffic offered, and he expresses of record his willingness to publish other joint rates upon reasonable demand. He contends that reciprocal switching arrangements are unnecessary if joint rates are published to cover the desired movement of the car.

Joint class and commodity rates are also published between points on the Central Railroad of New Jersey and points on the Erie. To and from near-by territory the rates apply via the car-float transfer between Jersey City and Weehawken, while the rates to and from distant points apply through junction points farther west, such as Carbondale, Pa. The Erie also connects with the Pennsylvania at Marion, a station approximately 2 miles from the water front at Jersey City, and also with the Lehigh Valley by using the Pennsylvania's tracks at Marion. Joint class rates are published between points on the Erie and points on the Lehigh Valley, Marion being used as the junction on short-haul traffic, and more distant junction points on long-haul traffic. By virtue of certain agreements which it has entered into with them the Lehigh Valley Railroad has given the Pennsylvania, the New Jersey Central, and the West Shore access to industries located on the southern part of the connecting railroad. The points of connection between the various trunk lines on the Jersey shore are indicated in Appendix J.

This somewhat detailed description of the rates and facilities provided by the several trunk lines for the interchange of traffic between them shows that shippers located in Jersey City are accorded a liberal choice of routes over which to ship their products. An industry located on the Pennsylvania in Jersey City, for example, may route his shipments to the west over the lines of the Pennsylvania system, over the Pennsylvania and the Lackawanna, over the Pennsylvania and the Erie, or over the Pennsylvania and the New York Central lines, and in each instance joint through rates are published to cover the movement, or the switching charges of 4<sup>c</sup> I. C. C.



the originating line are absorbed by the carrier enjoying the line haul. Practically the same situation prevails with respect to east-bound traffic. It is clear, therefore, not only that Jersey City shippers have many routes over which to ship their products, but that consignees there located can likewise be reached over several different routes.

With respect to eastbound traffic the complainants seem to object principally to the fact that the defendants do not provide reasonable switching rates between their terminals on the New Jersey shore to provide for the transfer of shipments which through error on the part of the shipper or consignee have arrived at the wrong terminal. The defendants publish joint rates between their terminals to cover the transfer of such cars, but the rates apply over routes requiring hauls varying in length from 6 to 157 miles, and the complainants contend that the connecting railroad should be used to effect the transfer, making the switching distance only a mile or two. For the purpose of showing the inconvenience to which New Jersey shippers are sometimes subjected because of the lack of more favorable switching arrangements between the trunk lines at Jersey City the complainants have attached to their petition an exhibit describing the movement of 24 carloads of various commodities. The defendants classify one of them as being without the scope of the complaint; six as intrastate shipments and therefore not within our jurisdiction; three as less-than-carload shipments; two as having moved through the nearest available junction point at the specific request of the shipper; and three as having been forwarded under provisions as to reconsignment admitted by the complainant to be reasonable. We consider it unnecessary for the purposes of this case to determine whether, as the defendants contend, three others were intrastate shipments under the rule laid down in *Gulf, C. & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403. Five, perhaps six, of the shipments were admittedly within our jurisdiction and within the scope of the complaint, but all of these arrived at the wrong terminal through error on the part of the shipper or consignee.

It was difficult to ascertain at the hearing the exact relief desired by the complainants with respect to the establishment of switching facilities, but it is thus defined in their brief:

What the complainant wants the Commission to do is to establish through rates between the various delivery points on the trunk line terminals along the Jersey shore via the shortest available route, which in a majority of instances would involve the use of the so-called connecting railroad, heretofore described, and to require these carriers to establish in connection with such routes reasonable switching rates applicable upon interstate shipments.

No prayer is made in the complaint for the establishment of through routes or joint rates, and in the absence of such a prayer we can

not establish them. *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583.

It is clear from the whole record that the complainants are particularly interested in the establishment of reciprocal switching arrangements which will give the shippers of northern New Jersey access to the rails of several carriers on traffic shipped to the west. This relief can not be granted, for reasons already explained. With respect to eastbound traffic they seem to desire nothing less than the establishment of switching charges which will permit shippers, after erroneously billing their shipments to the wrong terminal, to require the carriers to transfer them directly from one terminal to another on the Jersey shore, where the congestion of terminals makes the operation difficult and expensive. The record affirmatively shows that such a transfer would be most inconvenient for the carriers. One of the witnesses for the defendants, whose testimony on this point has not been contradicted, said:

The freight must be handled through the outlying junctions. If the interchange referred to with the New Jersey Junction (Railroad) be used for the general interchange of traffic, it would be necessary for the Pennsylvania Railroad to take that traffic to their classification yard, 3 or 4 miles distant, and classify it, and get it into the usual movement of traffic for the different deliveries. That section, as well as other sections of New Jersey, is very much congested now, and it is embarrassing to handle the traffic as it is to-day, and if we were to make that a point of interchange for a general movement of traffic, we would simply have chaos. In addition to that, we would have to take that freight from the junction to the classification yard, which would involve probably as much expense, \* \* \* and practically the same haul, as it does to move it to these other junction points where we interchange it \* \* \*.

In most, if not all, the cases referred to the switching movement desired was from the public team tracks at one terminal to the public team tracks at another terminal. The defendants show that it is not the usual practice for carriers to publish switching charges for such movements, because they would have the effect of opening the terminals of one carrier to the cars of another. In *Waverly Oil Works Co. v. P. R. R. Co.*, 28 I. C. C., 621, at page 626, we said:

In this position of the Pennsylvania there is much force. Its terminals at Pittsburgh could not be enlarged materially without great expense and at some places not at all. \* \* \* To open those terminals to its competitors without further compensation than a mere switching charge would, under the circumstances existing at Pittsburgh, seem to be unjust and unreasonable. Take, as an illustration, the Wabash Railroad, which has recently obtained an entrance into Pittsburgh and which has practically no terminal facilities. This road competes with the Pennsylvania for traffic to and from Pittsburgh at many points. Shall it have the right to demand upon the payment of a switching charge an entrance to those terminals?

The claim that to require the Pennsylvania to handle the cars of the Wabash for a switching charge \* \* \* would be to give the use of those terminals

47 I. C. C.

to its competitor has great force. The Supreme Court of the United States has itself apparently so said in *L. & N. R. R. Co. v. Stock Yards Co.*, 212 U. S., 189. \* \* \* We do not think that this Commission under the circumstances in this case ought, as a matter of discretion, even if it could as a matter of law, to establish a mere switching charge which \* \* \* competitors of the (defendant) lines can absorb and under which they obtain the virtual use of these terminals.

Even if it had the power to do so the Commission could not, upon the evidence now before it, require the defendants to establish the interterminal switching arrangements sought by these complainants.

#### RECONSIGNMENT CHARGES.

It is the policy of the carriers serving the port of New York to permit shippers to bill their shipments to "New York lighterage," without more specific designation of the place of delivery, with the understanding that the cars thus billed will be hauled by the carrier to its holding yards on the New Jersey shore, to be forwarded to a point in New York harbor upon the receipt of more definite instructions from the shipper.<sup>1</sup> If those instructions are received before the car reaches the holding point it is forwarded to any point within the lighterage limits without the imposition of any charge in addition to the New York rate, provided, of course, that the commodity is one for which free lighterage is provided in the tariffs. If the instructions are not received before the car reaches the holding point an additional charge of \$2 is imposed for forwarding it to the point specified. If the shipper decides, after the arrival of the car at the terminal, to reconsign it to a point in New Jersey, such as Newark or Paterson, a reconsignment charge of \$5 is imposed. The complainants allege that "this practice is in itself unreasonable and involves an unreasonable discrimination against the shipments to and from interior New Jersey points."

That this practice operates to the relative disadvantage of industries in New Jersey may be shown by an illustration. The Trexler

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<sup>1</sup> The Pennsylvania Railroad's lighterage tariff, for example, contains the following item:

"NEW YORK LIGHTERAGE, OFFICE 8 BROADWAY, NEW YORK CITY.

"This is not a station, but the name given the agency which handles all freight requiring use of water equipment in receiving or delivering freight in New York harbor \* \* \*.

"The rail termini, at which freight is delivered to or received from water equipment for forwarding or delivery, are located at Greenville piers and Harsimus cove (Jersey City), N. J. \* \* \*.

"All shipments requiring lighterage delivery must be receipted and billed to 'New York lighterage.' \* \* \*.

"All carload shipments for delivery in New York or Brooklyn locally, or to vessels in New York harbor, not consigned to a specific station of this company \* \* \* must be receipted and billed to 'New York lighterage' and will be held in or on cars, piers, or warehouses at Greenville piers or Harsimus cove (Jersey City), N. J., until receipt of written order for disposition from consignee \* \* \*."

Lumber Company, located at Harrison, N. J., a suburb of Newark, has competitors in New York City. The rates on lumber from points in the west to Harrison are the same as the rates to New York. If the Trexler Company orders a carload of lumber from a point in the west, billed to itself at Harrison, and after its arrival decides to reconsign it to a customer in Trenton, N. J., a reconsignment charge of \$5 is imposed, in addition to an extra charge for the back haul. If the New York dealer, on the other hand, orders a carload of lumber to be shipped to itself at "New York lighterage" from the same point in the west, and decides after its arrival, but before it leaves the holding yard, to have it delivered to a customer within the lighterage limits, the carrier will perform that service without imposing a reconsignment charge, and no extra charge corresponding to the back-haul rate will be made. This applies to shipments forwarded to points along the New Jersey shore within the lighterage limits as well as to shipments carried across the harbor.

The defendants contend that the difference in transportation conditions justifies the difference in charges. When a car billed to "New York lighterage" arrives at a holding yard in Jersey City, the carrier has not completed its transportation service, for it is well understood that the actual destination of the shipment is not the holding yard but some other point in the harbor, and that delivery is to be made at that point at the New York rate. If, therefore, the shipper requests the carrier to forward the car to a pier station on Manhattan Island, the carrier does not perform an additional line-haul service, but simply continues the movement of the car until it reaches the desired point; and under the circumstances it would clearly be inadvisable to impose a charge similar to the back-haul charge which applies when shipments are reconsigned to points in New Jersey. The \$2 charge is in the nature of a penalty imposed upon the shipper for his failure to give timely instructions to the carrier and is intended also as a remuneration to the carrier for the additional service performed. If, on the other hand, a shipper desires to reconsign to a New Jersey point a car which has already arrived in Jersey City, the car must be taken from the classification yard where eastbound freight is usually held, switched to the classification yard provided for westbound freight, put into its proper train, and sent over an entirely different route, the back haul being somewhat in the nature of a separate and distinct transportation service.

The defendants show also that the \$5 reconsignment charge is the charge generally provided in their tariffs for the reconsignment of shipments at any points on their lines, and that the privilege accorded to the New York shippers or consignees of changing the destination after the car leaves the holding yard for a charge of \$2

is similar to the diversion privilege generally accorded. It is pointed out, for example, that a car originally consigned to Washington, N. J., a point in the New York rate group intermediate to Hoboken, could be diverted to Hoboken for \$2, and that no additional charge would be imposed for the line haul from Washington to Hoboken, because both points are in the same rate group.

That the conditions under which freight is delivered in New York harbor are unique is not open to question. The fact that industries located along the shores of Manhattan Island, Brooklyn, and Staten Island have convenient access to the terminals of the rail carriers on the New Jersey shore is attributable principally to favorable natural conditions. Because of the flexibility of the terminal operation, previously discussed, it is but natural that the carriers should accord a terminal service correspondingly flexible. The evidence of record affords no basis for the condemnation of the carriers' practice of permitting cars to be billed in the first instance to "New York light-erage," or for a finding that a similar practice should be established where the same conditions do not exist. To hold that the \$5 charge for reconsignment to points in New Jersey is excessive would be tantamount to a general condemnation of the defendants' reconsignment tariffs, and a finding that the \$2 charge applied for forwarding a car to points in the harbor is too low would not be supported by the evidence. The circumstances are so different that a difference in practice and in charges is justifiable, and we are unable to conclude that the defendants' rates or practices in this respect are unduly prejudicial or otherwise unlawful. We approved the \$2 charge in *New York Produce Exchange v. B. & O. R. R. Co.*, 46 I. C. C., 664.

#### FREE TIME ALLOWED ON NEW YORK TRAFFIC.

On domestic shipments consigned to "New York lighterage" five days' free time is allowed on the New Jersey side of the harbor, and when the car reaches its point of delivery in Manhattan an additional period of free time is allowed—two days for team-track delivery and three days for pier station delivery, making a total free time of seven days or eight days, as the case may be. On traffic consigned to points in the northern part of the state of New Jersey the only free time allowed is the usual period of 48 hours. The complainants allege that the more liberal allowance accorded to New York consignees gives them an undue preference and advantage, to the undue prejudice and disadvantage of consignees in New Jersey.

The principal witness testifying for the complainant with respect to this feature of the case conceded that some additional free time should be allowed for the holding of New York shipments on the New Jersey shore, and that the additional free time allowed in New



York and Brooklyn after the arrival of cars there should not be reduced. He expressed the opinion that three days' free time on the New Jersey shore would be more equitable than five days, but the opinion was not accompanied by evidence which would warrant a definite finding on that point. The admission by this witness that some additional time should be allowed for the holding of cars on the New Jersey shore must be regarded as a recognition of a difference in the conditions, and we are unable to find that the more liberal allowance of free time on shipments consigned to deliveries in Manhattan and Brooklyn subjects the complainant to undue prejudice. Effective February 15, 1917, tariffs were filed by the trunk lines reducing the time allowed for holding on the Jersey shore cars consigned to "New York lighterage" from five days to two days, and in *New York Harbor Storage*, 47 I. C. C., 141, we approved the reduction.

#### FAST FREIGHT SERVICE FROM NEW YORK.

The following paragraph is taken from the complaint:

In the New Jersey cities and territory, with a population of over 1,500,000 people, and whose industries represent yearly in and out bound a tonnage of approximately 15,000,000 tons, freight delivered to the trunk lines on the Jersey side is not uniformly placed in the carriers' fast freight manifest trains, and to make certain of this service traffic is extensively trucked to New York from the cities in New Jersey in order to get the benefit of Manhattan's fast freight service. This operates to place upon New Jersey an added cost. This practice is in itself unjust and unreasonable, and involves an undue and unjust discrimination against New Jersey shippers.

The evidence addressed to this point is quite unsatisfactory and fails to sustain the allegation. It is true that several witnesses for complainants expressed their dissatisfaction with the service rendered by the defendant carriers, particularly with respect to traffic to New England points; and in view of the fact that all the steamships plying between New York harbor and points on Long Island Sound sail from the New York side of the harbor, and of the further fact that the New York, New Haven & Hartford has its terminals on that side of the harbor, it is doubtless true that the New Jersey shippers can often save time by trucking their shipments to Manhattan. It is not shown that shipments consigned to points in the west are extensively trucked to New York, unless it be for the purpose of taking advantage of the service offered by the ocean-and-rail routes.

The evidence does show, however, that freight is tendered to the defendants in enormous quantities at their pier stations on Manhattan Island and in Brooklyn, and it is a surprising fact that the less-than-carload tonnage from Manhattan to the west exceeds the 47 I. C. C.



carload tonnage in volume. It is the usual practice to send less-than-carload freight from Manhattan to the west in carloads. It is undoubtedly true that the service is superior to that accorded at points in New Jersey, where the volume of freight offered is much smaller, but witnesses for the defendants testified without contradiction that with this exception the same fast freight service which is maintained from their pier stations in Manhattan is accorded to New Jersey shippers, and that, in fact, the New York and New Jersey freight often moves to the west in the same trains. The advantage enjoyed by the Manhattan shippers with respect to less-than-carload shipments is clearly explained by one of the witnesses, the president of the Bush Terminal Company:

The merchants in New York are competing with the merchants of other communities, both on the basis of cost of getting their goods from New York to the customer, and on the basis of the time occupied. The element of time, in many cases, is quite as important as the element of cost. If a merchant desiring to ship to some particular city, we will say Pittsburgh, \* \* \* takes his packages to the west side of Manhattan, they can be put into a Pittsburgh car, and \* \* \* the car is moved immediately to the New Jersey shore, put into a fast train, and goes on its way at once, and is delivered more quickly than the same class of package freight originating at other points in the harbor. Those shipments (from other points in the harbor) are loaded into cars for junction points on the various roads. They go to these transfer points or junction points, and are transferred to a freight house; and, as a rule, get to destination 24 to 48 hours later than the shipments which are put in the car for destination on the west side of Manhattan.

While it is undoubtedly true that the service accorded to Manhattan shippers is superior to that enjoyed by their New Jersey competitors and shippers in other parts of the harbor, it must be remembered that there is a marked difference in the transportation conditions. In their brief the complainants express dissatisfaction with the "enormous advantage" enjoyed by the New York shippers by reason of their accessibility to all of the trunk lines. As previously stated, this advantage, which is unquestionably an important one, is due to the flexibility of terminal operation made possible by the use of the harbor waters as "an interior belt line." The defendants could hardly be expected to guarantee to the interior New Jersey cities all the advantages which nature has bestowed upon the communities bordering on the harbor; nor do we feel that we could with propriety accept the complainants' suggestion that if the present rate structure is maintained "artificial means should be devised for giving them (New Jersey shippers) all of the privileges and advantages under the rate structure which New York enjoys." We must conclude, after a careful consideration of the evidence, that the complainants have failed to show that the service rendered by the defendants is unjustly discriminatory or otherwise unlawful.

## OPPORTUNITIES FOR FUTURE DEVELOPMENT.

Reference has already been made to the numerous plans which are being made and carried out for the development of the port; to the proposed marginal railroad in Brooklyn, and to the plans of the New York dock department; to the terminals now being constructed by the state of New York for the accommodation of the boats moving through the new barge canal; to the New York Central's proposed improvement on the west side of Manhattan; and to the movement for the better coordination of the port by the construction of bridges or tunnels between New Jersey and Manhattan. Other opportunities for the development of the port may be referred to briefly.

Although a very large part of Jersey City's water front has been preempted by the carriers, there remains one site, known as the South Cove property, available for the construction of a large marine terminal. This property, which lies at the entrance to the Morris Canal, is already owned in part by the city. Near it is what is known as the Little Basin property, also available. An engineer who recently studied the New Jersey water front with a view to determining its possibilities reported that "these two sites—the Little Basin and the South Cove—afford room enough for the construction of from 8 to 10 ample sized steamship piers with the warehouses and car yards necessary for their operation and for factories for an industrial section adjacent to them," and that "for a comparatively modest expenditure a marine terminal could be established there, much to the financial benefit of the city, which would compare favorably in size with the Chelsea terminals in New York or the Bush terminals in Brooklyn and would be infinitely superior to either in point of economy of operation and general desirability as a freight terminal on every logical ground." Newark Bay also offers opportunities for development. The city of Newark has been formulating plans for some time for the reclamation of the marsh lands on the shore of the bay and the construction of wharves and other terminal facilities, and work on these improvements is now progressing.

Working in cooperation with the president of the Bush Terminal Company, the city of Bayonne has recently planned the construction of a great marine terminal to be constructed by the city and if the plan succeeds this terminal, the initial cost of which will be \$10,000,000, will be somewhat similar to the large terminals on the Brooklyn shore, but with the added advantage of proximity to the rails of several trunk lines. Large piers will be built for the accommodation of ocean vessels, and there will be warehouses, float bridges, and other terminal facilities. The proposed terminal will

also perform a novel function in acting as a "clearing house" for less-than-carload shipments. We have already seen that Manhattan shippers have an advantage over their competitors in other parts of the harbor because less-than-carload traffic is moved from the west side of Manhattan in solid carloads. The same service can not be rendered in other parts of the harbor because package freight is not offered in sufficient volume to permit the sending of a car float with a load of a dozen cars or more to each railroad terminal. It is proposed to connect the Bayonne terminal with the rails of all the New Jersey trunk lines by means of a belt line on the New Jersey meadows. Less-than-carload shipments could then be loaded into cars at freight stations in various parts of the harbor, cars routed over all the trunk lines could be floated to the Bayonne terminal, and the belt line could distribute them among the several railroads. This would probably provide for shippers in all parts of the harbor the same expeditious service with respect to less-than-carload freight which is now enjoyed only by those who can conveniently truck their freight to the pier stations on the west side of Manhattan.

The Lehigh Valley Railroad has practically completed plans for a modern terminal costing \$16,000,000 at Jersey City, and the Lackawanna has recently purchased a valuable site near its Hoboken terminal which it expects to devote to a similar use.

#### CONCLUSION.

The complainants' contention that the methods of handling both domestic and export traffic at the port of New York must be thoroughly revised if the maximum of efficiency is to be attained is abundantly established by the evidence of record. Adequate freight tunnels under the North River, which apparently could be constructed at a cost small in comparison with the resulting benefits, would make it possible to handle a large portion of Manhattan's freight traffic without the use of lighters or car floats. A large part of the valuable water front on the New Jersey shore, now used almost wholly for the transfer of freight between the rails and the floating equipment, could be released for other and more suitable purposes; the congestion on the west side of Manhattan Island caused by the assembling of countless vehicles at the crowded piers to receive and discharge freight would be considerably relieved; and the pier stations on the Manhattan shore, now taxed to capacity, could be devoted in part to other uses.

We can not with propriety overlook the fact that the terminal problem at the port of New York is due in no small measure to competition between the railroads. With convenient through routes available to the shipping public over the lines of all the carriers,

and with the same rates of freight applying over all the routes, practically the only field of competition left to the railroads is that provided by their separate terminal operations. A shipper will employ the services of the carrier which offers him the most convenient facilities for the receipt and delivery of his shipments. It is this rivalry between the railroads in the matter of terminal service that has induced them to lay hold of almost every available foot of land on the New Jersey side of the harbor. It is this rivalry that prevents the establishment of reciprocal switching arrangements and joint terminal operation on the New Jersey shore, and for the difficulties encountered in endeavoring to persuade the railroads to construct freight tunnels under the river between New Jersey and Manhattan. And it is this rivalry that tempts the carriers to invest large sums in new terminals for their individual use instead of uniting in a common effort to solve in a larger way a problem whose solution can never be attained as long as the present policy of unrestrained competition is continued. It is not too much to expect that the defendants will take immediate steps to reorganize and coordinate their terminal facilities at the port. There can be no justification, especially in a time of national emergency, for a policy that permits certain terminals to be congested with a surplus of freight while at the same time a near-by terminal has not enough traffic to keep it busy. It is necessary that the great terminals at the port of New York be made practically one, and that the separate interests of the individual carriers, so long an insuperable obstacle to any constructive plan of terminal development, be subordinated to the public interest.

The discussion earlier in this report of the plans proposed for the Bayonne terminal, of the marginal railway in Brooklyn, of the improvements of Newark Bay, of the proposed enlargement of the New York Central terminals, and of the plans of the dock department of the city of New York shows that there are almost unlimited opportunities for the development and improvement of the terminal facilities at the port of New York, and one can not study the situation in the light of the evidence of record in this proceeding without being impressed with the fact that the problem of coordinating the terminal facilities and developing them is readily and properly separable from the question of freight rates. Although it has been plainly suggested by certain parties in the present proceeding that a finding in favor of the complainants would induce the carriers to unite their efforts toward bettering terminal conditions at the port, it is clear that the authority to regulate rates was not delegated to the Commission for any such purpose. The methods of handling freight at the port can be revised and improved without specially adjusting the freight rates

with that end in view, and the remarkable growth and progress of the port can best be continued by treating it as an organic whole. Not without significance in this connection is the fact that one of the principal witnesses called by the complainants, for years an advocate of bridges or tunnels to connect New Jersey and Manhattan, expressed the opinion that when the facilities at the port are properly coordinated the rates should be the same to and from both sides of the harbor. The solution of the terminal problem is to be found, not in a change in the rate adjustment, but in the united efforts of the people of the district and the carriers toward the improvement of conditions in which their interests are mutual.

The ever-increasing cost of terminals and of terminal services presents a problem which the carriers must sooner or later face and solve. In the early days, when terminals were small and inexpensive, the cost of the line haul was the most conspicuous item of expense in the transportation service performed by the railroad. The New York Central, for example, employed ordinary team tracks in making its deliveries on Manhattan Island. Its present terminal facilities in Manhattan, including its expensive warehouses and lighterage and floatage equipment, are worth many millions of dollars, and an additional expenditure of more than \$50,000,000 in the near future is planned. The plans of the Lehigh Valley and the Lackawanna for new terminals on the Jersey shore have already been mentioned.

The unusual cost of the terminal service at the port of New York and the plans of the carriers serving the port to invest many millions of dollars in new terminals adds peculiar interest to the question whether the railroads can continue indefinitely their policy of rendering valuable terminal services without imposing specific terminal charges therefor. In that connection the comments of one of the witnesses in this case are worthy of careful consideration:

The essential defect of the country's railroad system is the great cost of terminal handling as compared with the economy of hauling the trains, and nowhere is this defect more in evidence than at New York. Defective city terminals throughout the land must be enlarged, modernized, and integrated. At each city, as in the cities of Europe, the terminals will come to be conducted as administrative units. These changes of policy involve vast expenditures which can only be recouped by terminal service charges, and consequently there must be substituted for the old-fashioned practice of individualistic competing terminals a modern policy of terminal integration and a segregation of terminal charges from hauling charges.<sup>1</sup>

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<sup>1</sup> Three days before the hearing in this case the Commission received a letter from the American Association of Port Authorities expressing the view that the lack of a definite and uniform policy with respect to the imposition of terminal charges prevents the proper development of terminals and results in "terminal inefficiency and delay." The association feels that it is particularly important to provide "some system of accounting by carriers wherein they are required to separate their charges for terminal handling from those for main line or through service."



The city of New York, intervener, concedes that "terminals are generally recognized as presenting the great financing problem of the railroads," and the defendants admit that "the cost of terminal service is and should be a feature in the establishment of rates," although they contend that in a case as comprehensive in character as this one the single item of terminal cost should not be permitted to play too important a part.

The preceding observations should not be interpreted to indicate that the complainants in this proceeding offer a solution of the terminal problem at the port. They do not ask that the New York rates be constructed by adding a reasonable terminal charge to the Jersey City rates. On the contrary, they asked at the hearing that the rates to and from the points in northern New Jersey be reduced substantially to the Philadelphia basis, or, in other words, that the Philadelphia rate group, already large, be extended to include northern New Jersey. The granting of this request would hardly be an important step in the direction of scientific rate construction. The defendants show that with the exception of New York and Brooklyn there would be little left of the New York rate group if the complainants' prayer were granted, and they contend that the new Philadelphia group, reaching from the Susquehanna River to the Hudson, and from a point just east of Harrisburg, almost to Albany, would be a "geographical monstrosity." Nor can the interveners refrain from observing that the complainants' desire to be placed on the same rate basis as points almost as far west as the Susquehanna River is hardly consistent with their theory that rates should fairly reflect the cost of the service performed.

Although it is probable that the time will soon come when the carriers will find it necessary to accord adequate recognition in the rate structure to the heavy and ever-increasing expense of terminal operation, it can not be said at the present time that their failure to do so leads necessarily to the conclusion that their rates are unduly prejudicial or otherwise unlawful. In determining the issues presented for our consideration in a case of this character we must give due recognition to the long-established practices of the carriers throughout the country. If it be unlawful for the defendants in this proceeding to regard the whole metropolitan district as a unit for rate-making purposes, we should be obliged to conclude that the practice at San Francisco also violates the provisions of the act. And if the unlawfulness is found to be due solely to the defendants' failure to make their rates reflect all or part of the cost of lighterage, it would seem logically to follow that it is unlawful in any instance for carriers to accord the same rate to different shippers for the performance of services which differ materially in cost.



Although the rate structure will undoubtedly become more logical and more stable as the rates approach more nearly in each instance to the cost of service, we can not condemn a rate solely because it is not constructed on that principle, unless it be clearly shown that the resulting discrimination is undue; and whether or not it is undue can best be determined by a careful consideration of the history of the rate, the reason for its establishment, the nature of the traffic, the competition between shippers and communities, and all other pertinent evidence.

In most of the complaints filed with us alleging a violation of the third section of the act, and involving a relationship between competing cities, it is alleged that the higher rates to and from the complaining city subject it to undue prejudice and give an undue preference to its competitor or competitors. Such a case, for example, was *Chamber of Commerce of Newport News v. S. Ry. Co.*, 23 I. C. C., 345, in which the complainant alleged that the rates between Newport News and points in the southeast were unjustly discriminatory and unduly prejudicial because they exceeded the rates between Norfolk and the same points. The evidence introduced in that case showed that Newport News is northwest of Norfolk, a distance of 12 miles across the James River. The only railway reaching Newport News with its own rails is the Chesapeake & Ohio, which has its principal eastern terminal at that point, where it maintains wharves, piers, float bridges, and other terminal facilities. The Norfolk & Western, the Norfolk Southern, the Atlantic Coast Line, the Southern, and the Seaboard Air Line have their terminals on the Norfolk side of the harbor, where they have their wharves, float bridges, and other terminal facilities. The Chesapeake & Ohio also has a terminal at Norfolk, and it transfers freight across the harbor by means of car floats and barges. Its floating equipment is used also by several of the other carriers. We found that Newport News and Norfolk are competing cities; that both have intimate commercial relations with the south; that the rates to and from both points were formerly the same; that Newport News was prejudiced by the higher rates; and we concluded that the rates between Newport News and points more than 150 miles from Norfolk should not exceed the Norfolk rates. In other words, we established an adjustment of rates similar in character to that already existing at the port of New York, and which the complainants in this proceeding allege to be unlawful.

Similarly, in *City of Astoria v. S., P. & S. Ry. Co.*, 38 I. C. C., 16, it was alleged that the rates from Astoria, in the state of Oregon, to points in the territory known as the "inland empire" were unduly prejudicial to the extent that they exceeded the rates from Portland and Seattle. The average distance from Astoria to points in the in-

land empire exceeds the average distances from Seattle and Portland by 45 miles and 100 miles, respectively. The defendants contended that if the rates from Astoria were reduced to the Portland basis, Portland in turn, because of its advantage of 100 miles in distance, would seek a still lower basis. In commenting upon that contention we said:

It is obvious, however, that there is something of a natural relationship in the rates of Seattle, Tacoma, Astoria, and Portland that can not be ignored, and a reduction in the Portland rate to and from the inland empire does not necessarily follow as an inevitable consequence of a reduction in the Astoria rates to the basis of the Seattle and Tacoma rates.

We concluded that the rates between Astoria to a portion of the inland empire should not exceed the rates between Seattle, Tacoma, and Portland and the same territory. In reaching that conclusion we said:

A careful examination of the record makes it clear that these north Pacific coast ports have a closer geographic and economic relation one to the other than is at this time reflected in the tariffs of the defendant carriers and that the latter in their present rate adjustment unduly discriminate against Astoria and unduly prefer the Puget Sound points.

In view of these decisions it must be conceded that there is merit in the contention of the New York interveners that the metropolitan district should be regarded as a unit, and that lower rates to and from northern New Jersey would subject New York to undue prejudice. Having held that the rates to and from Astoria were unlawful because the north Pacific coast ports have a closer geographic and economic relation one to the other than is reflected in the defendants' tariffs, it is clearly impossible to condemn an adjustment whereby due recognition is given to the geographic, commercial, and economic unity of the metropolitan district of New York. The complainants do not ask that they be placed on a parity with their competitors; they ask that they be given an advantage in rates solely because the defendants incur a greater transportation cost in serving their competitors. It must be apparent that the conclusions in the cases above cited could not have been reached if the factor of transportation cost had been considered of controlling importance.

In their briefs and upon oral argument the complainants suggest, as previously stated, that substantial relief could be accorded by carving out of the present New York rate group a separate zone embracing only the northern part of the state of New Jersey. It must be apparent from the foregoing discussion that the adoption of that suggestion would be inadvisable. The effect of such a course would be to accord a preferential basis of rates to one part of an industrial community, to the disadvantage of another part; the New York Central situation, previously discussed, would make it almost

impossible for a rate structure so constituted to endure; the New York rate group would consist only of Manhattan and Brooklyn and a few other points; Staten Island would logically be entitled to the lower basis of rates; and if, as the complainants suggest, the rates to and from the proposed new group were made 2 cents lower than the New York rates and 1 cent higher than the Philadelphia rates, the spread in rates between New York and Philadelphia would be increased from 2 cents to 3 cents, disturbing a relationship that has obtained for years. If northern New Jersey may properly ask to be removed from the New York group, Connecticut would seem to be warranted in asking, for similar reasons, that it be removed from the Boston group. A rigid application of the cost principle would lead to a complete change in the whole rate structure here under consideration.

In giving comprehensive consideration to such a problem as is here presented we must accord due weight to the history of the rate adjustment. If in the development of the rate fabric in past years recognition had been given to the expense of the terminal service on both sides of the harbor, with a view to affording the carriers in each instance reasonable remuneration for the terminal service, it is not improbable that a more satisfactory and enduring rate structure would have resulted, and it would perhaps be difficult now to require the extension of the rail rates so as to include lighterage. But such has not been the history of the adjustment. Competitive forces that the carriers have not been able to ignore have exerted their influence and have had the effect of bringing to a common level most of the rates to and from this great industrial community. We are not prepared to say that the carriers' recognition of the competitive influences, resulting as it has in an equality of rates throughout the zone, is essentially unlawful. The violence that would be done to all interests by ignoring the growth and development of the rate structure and requiring a readjustment on technical grounds would be very great. It may be observed, however, that the position taken by the complainants is in a measure justified from an economic viewpoint, and that while at the present time all parts of the metropolitan district may with propriety be grouped for rate-making purposes, there may come a time when the burden of handling the enormous tonnage in and out of the port will be so onerous that Manhattan itself may need such relief as lower rates to and from the New Jersey shore would in part afford.

After carefully considering and weighing the voluminous evidence in the record before us we can not conclude that the rate adjustment has unduly prejudiced the people of the northern part of the state of New Jersey, or that the solution of the terminal problem at the port lies in the proposed readjustment of the freight rates; and in

considering the situation here presented the Commission can not with propriety overlook the fact that bills have been introduced in the legislatures of the states of New York and New Jersey providing for the appointment by the governors of those commonwealths of state commissions to study jointly the situation at the port and make appropriate recommendations, "to the end that the said port shall be efficiently and constructively organized and furnished with modern \* \* \* piers, rail and water and freight facilities, and adequately protected in the event of war." If we could overlook the fact that historically, geographically, and commercially New York and the industrial district in the northern part of the state of New Jersey constitute a single community; if we could disregard the fact that the freight rates in this country are not and never have been constructed solely with regard to the specific cost of operation; if it were not clear that the establishment of rate groups is in some instances beneficial alike to the carriers and to the public; if we could forget for the moment that both sides of the port of New York always have been and doubtless always will be accorded the same rates by the boat lines; were it not for the fact that to grant the relief asked would inevitably disrupt the whole structure of rates to and from the Atlantic seaboard, and this without any substantial showing by the complainants that the present adjustment operates to their actual injury; if we could disregard the fact, abundantly established by the evidence of record, that the communities of northern New Jersey have prospered under the present rate adjustment; and if we were not persuaded that cooperation and initiative must eventually bring about the improvements and benefits which the complainants hope to attain through a change in the rate adjustment; then we might conclude that the present rates result in undue prejudice to the people and the communities on whose behalf this complaint was filed. On the evidence now before us that conclusion can not be reached.

The complaint contains a number of other allegations not supported by the evidence. No evidence was submitted in support of the complainants' prayer for the establishment of certain switch connections between the lines in New Jersey, or in support of the allegation that the class rates from Jersey City to points in New Jersey are materially higher than the rates maintained by the individual lines for single-line hauls, and that the difference is not warranted by the transportation conditions. These are intrastate rates and not within our jurisdiction.

The complaint will be dismissed.

COMMISSIONERS AITCHISON, WOOLLEY, and ANDERSON did not participate in the disposition of this case.

## APPENDIX A.

*Mileage operated by railroads with terminals at New York harbor; filed in the record as Lincoln Exhibit No. 2.*

**Carriers with terminals on New York side:**

Baltimore & Ohio (including C., H & D.)-----	5, 616. 04
Long Island Railroad-----	398. 48
New York Central lines, excluding West Shore-----	12, 318. 31
New York, New Haven & Hartford-----	2, 312. 62
Central Vermont (Grand Trunk)-----	411. 20

Total-----	21, 056. 65
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**Carriers with terminals on New Jersey side:**

Central Railroad of New Jersey-----	677. 93
Delaware, Lackawanna & Western-----	959. 81
Erie Railroad system-----	2, 547. 60
Lehigh Valley Railroad-----	1, 448. 74
New York, Ontario & Western-----	568. 46
Pennsylvania System (excluding L. I. R. R.)-----	10, 526. 55
Philadelphia & Reading-----	1, 448. 11
West Shore -----	<sup>1</sup> 479. 11

Total-----	18, 651. 31
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<sup>1</sup> As the West Shore is operated by the New York Central, it would apparently be fair to credit the New Jersey side with a large part of the mileage of the New York Central system.

**APPENDIX B.**

**Number of principal steamship lines with sailings from various parts of the port of New York; filed in the record as part of Lincoln Exhibit No. 1.**

Number of lines from Manhattan, Brooklyn, and Staten Island.	Sailing to—
38	European ports. <sup>1</sup>
15	West Indies and Mexico. <sup>1</sup>
15	Central and South America.
5	Australia and New Zealand.
5	African ports.
7	China, Japan, and Philippines.
5	East Indies and Ceylon.
1	Pacific ports.

<sup>1</sup> Service of Austro-American, Phoenix, and Red Star lines to Europe, and Hamburg-American (Atlas service) and Royal Mail Steam Packet Co. to West Indies and Mexico discontinued during the war.

Total, 91 lines from New York side.

From Jersey City and Hoboken.	Sailing to—
Hamburg-American <sup>1</sup> .....	Genoa, Naples.
Hamburg-American <sup>1</sup> .....	Germany, etc.
Holland-American.....	Amsterdam-Rotterdam.
Lloyd-Sabando.....	Genoa, Naples.
North German Lloyd <sup>1</sup> .....	Bremen, Genoa, etc.
Scandinavian-American.....	Christiania, Copenhagen, Stettin.
Swedish-American line.....	Stockholm, Gothenburg.
Trans-Atlantic-Italians.....	Italy.
Wilson line.....	Hull, Newcastle, and Baltic ports.

<sup>1</sup> Service discontinued during war.

Total, 9 lines from New Jersey side.



# APPENDIX C.

*Commerce of New York as compared with Boston, New Orleans, Philadelphia, Baltimore, and Galveston. Customs districts in each case. Annual average value of exports and imports stated by 10-year periods, 1861-1913, inclusive. Filed in the record as Emory R. Johnson Exhibit No. 2.*

Ports.	Average annual value of imports.	Per cent of total for United States.	Average annual value of exports.	Per cent of total for United States.	Average annual value of imports and exports.	Per cent of total for United States.
<b>1861-1870:</b>						
New York.....	\$237,408,708	64.8	\$137,648,088	34.5	\$365,056,796	62.7
Boston.....	25,967,959	10.2	13,397,628	3.3	49,365,587	8.5
New Orleans.....	6,884,028	1.9	35,695,965	8.9	42,579,993	7.7
Philadelphia.....	11,516,632	3.2	10,697,226	2.6	22,213,858	3
Baltimore.....	9,691,370	2.7	9,636,169	2.4	19,327,539	3.3
Galveston.....	221,405	.06	3,133,547	.3	3,354,952	.4
<b>1871-1880:</b>						
New York.....	357,430,909	66.7	269,565,783	45.7	626,996,692	55.7
New Orleans.....	13,244,561	2.4	79,120,011	13.4	92,364,572	8.2
Boston.....	52,421,466	9.7	33,423,197	5.6	85,844,663	7.6
Baltimore.....	23,542,156	4.4	34,151,144	5.2	57,693,300	5
Philadelphia.....	23,584,576	4.4	31,163,248	5.7	54,748,824	5
Galveston.....	1,383,235	.2	14,357,692	2.4	15,770,927	1.4
<b>1881-1890:</b>						
New York.....	460,475,896	66.3	339,724,966	44.4	800,200,864	55.1
Boston.....	63,637,221	9.2	63,135,671	8.2	126,772,892	8.6
New Orleans.....	11,195,378	1.6	86,612,929	11.2	97,808,307	6.7
Philadelphia.....	33,478,519	5.5	36,093,616	4.7	74,572,135	5.2
Baltimore.....	13,333,911	1.9	51,334,249	6.6	64,668,160	4.6
Galveston.....	1,322,914	.1	19,682,955	2.4	21,005,869	1.4
<b>1891-1900:</b>						
New York.....	490,142,932	64.2	397,291,510	39.8	887,434,442	62.6
Boston.....	68,463,638	9	97,300,068	9.7	165,763,706	9.3
New Orleans.....	16,207,839	2.1	96,730,005	9.6	112,937,844	6.3
Baltimore.....	13,630,712	1.7	36,896,808	3.4	50,527,520	3.7
Philadelphia.....	50,450,865	6.4	49,963,545	4.7	100,414,410	5.6
Galveston.....	1,080,212	.1	51,069,128	4.7	52,149,340	2.8
<b>1901-1910:</b>						
New York.....	697,726,032	60.5	575,271,730	35.5	1,272,997,762	62.9
Boston.....	96,069,251	8.3	95,423,645	5.8	192,091,896	7
New Orleans.....	37,079,867	3.1	150,172,374	9.3	187,252,241	6.3
Galveston.....	3,385,920	.2	150,182,062	9.3	153,567,982	5.4
Philadelphia.....	64,125,104	5.5	31,215,189	5	145,340,294	5.2
Baltimore.....	26,231,394	2.2	90,218,198	5.6	116,449,592	4.2
<b>1911-1913:</b>						
New York.....	968,542,546	58.1	840,815,892	37.4	1,809,358,438	62.2
Galveston.....	5,220,447	.3	340,036,290	10.6	345,256,737	6.2
New Orleans.....	74,737,094	4.4	163,992,180	7.2	238,729,274	8
Boston.....	130,829,969	7.6	70,259,636	3.1	201,089,605	5.4
Philadelphia.....	87,391,508	5.3	71,730,485	3.2	159,121,993	4
Baltimore.....	39,502,680	2.1	97,935,337	4.3	137,438,017	3.4

# APPENDIX D.

*Separate tonnage of the New York Central Railroad, the Erie Railroad, and the Erie and Champlain canals.*

1854.....	50	83	1886.....	85	11	28
1855.....	48	17	1887.....	36	12	80
1856.....	15	84	1888.....	52	14	08
1857.....	68	61	1889.....	41	14	23
1858.....	64	22	1890.....	44	14	66
1859.....	73	84	1891.....	76	17	40
1860.....	54	14	1892.....	53	15	16
1861.....	12	25	1893.....	73	17	86
1862.....	65	85	1894.....	82	14	70
1863.....	86	72	1895.....	86	15	88
1864.....	88	41	1896.....	17	26	43
1865.....	89	64	1897.....	30	15	88
1866.....	82	29	1898.....	86	22	20
1867.....	46	25	1899.....	74	22	86
1868.....	68	25	1900.....	86	26	04
1869.....	69	80	1901.....	22	24	12
1870.....	65	79	1902.....	86	26	75
1871.....	88	88	1903.....	60	25	42
1872.....	74	70	1904.....	65	28	86
1873.....	82	82	1905.....	12	26	53
1874.....	76	82	1906.....	81	24	84
1875.....	46	86	1907.....	86	28	82
1876.....	28	86	1908.....	36	23	86
1877.....	51	82	1909.....	85	22	22
1878.....	88	86	1910.....	36	27	87
1879.....	41	73	1911.....	61	26	80
1880.....	62	54	1912.....	81	28	89
1881.....	22	72	1913.....	27	40	86
1882.....	28	86	1914.....	86	27	54
1883.....	25	66	1915.....	81	24	88
1884.....	39	86	1916.....	82	41	85

<sup>1</sup> Large increase in tonnage may be accounted for in the consolidation of the Lake Shore & Michigan Southern Railroad with the New York Central.

**APPENDIX E.**  
**REPORT OF THE INTERURBAN COMMITTEE**  
**...OF THE...**  
**NEWARK BOARD OF TRADE**  
**DECEMBER, 1906**

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**NORTHERN NEW JERSEY CONSIDERED AS PART OF  
THE PORT OF NEW YORK**

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REPRODUCED THROUGH COURTESY OF FEDERATION OF CHURCHES

# APPENDIX F.

## National Docks Ry., Lehigh Valley R. R.

In-dex.	Refer-ence.	Station.	State.	Rate basis and waybilling instructions.
2	.....	Constable Hook.....	N. J....	New York rates and New York per cents; routing in connection with Merchants Despatch, Merchants Despatch-Dairy line, embracing the following lines: Red, White, Blue, West Shore, North Shore Despatch, Pere Marquette. House and track deliveries, C. L. and L. C. L. when so consigned. Waybill to Weehawken, N. J., via West Shore R. R., and specify delivery required. Billing via Red, White, and Blue lines should show N. Y. C. R. R. proportions in percentages for the West Shore R. R. Deduct before prorating, 3 cents per 100 pounds for service of N. D. Ry. from Weehawken, N. J.
4	.....	Bayonne City.....	N. J....	
6	.....	East Twenty - second street.....	.....	
8	.....	East Forty-ninth street..	.....	
12	.....	Jersey City.....	N. J....	
		Communipaw avenue.....	.....	
		National docks.....	.....	
		Eagle Oil Refinery.....	.....	

! Indicates addition.

## LIST OF INDUSTRIES.

The National Docks Railway connects with the West Shore Railroad at National Junction, Jersey City, N. J., and reaches various industries located in Jersey City, Bayonne, and Constable Hook, N. J., as follows:

Industry.	Delivery required.
*American Radiator Co.....	East Forty-ninth street, Bayonne City, N. J.
American Type Founders Co.....	National Docks, N. J.
Atlantic Brass Co.....	Communipaw avenue, Jersey City, N. J.
*Bayonne Building Co.....	East Twenty-second street, Bayonne City, N. J.
Bayonne Launch Co.....	East Forty-ninth street, Bayonne City, N. J.
Bayonne Lumber Co.....	East Twenty-second street, Bayonne City, N. J.
Bergen Point Sulphur Co.....	Constable Hook, N. J.
Bishop-Babcock-Becker Co.....	Communipaw avenue, Jersey City, N. J.
*Bishop & Babcock Co.....	Do
Boyle Co., J. F.....	Do
Bussing Co., F. W.....	Do
*Collins, Lavery & Co.....	National Docks, N. J.
Courtney, Frank.....	Communipaw avenue, Jersey City, N. J.
*Dixon Crucible Co., Jos.....	Do
*Federal Creosoting Co.....	Constable Hook, N. J.
*General Baking Co.....	Communipaw avenue, Jersey City, N. J.
Hudson Terminal Ice Co.....	East Twenty-second street, Bayonne City, N. J.
*International Nickel Co.....	Constable Hook, N. J.
*Lackawanna Bridge Co.....	East Forty-ninth street, Bayonne City, N. J.
Macbeth & Co., James.....	National Docks, N. J.
Manhattan Electrical Supply Co.....	Communipaw avenue, Jersey City, N. J.
Messereau Metal Bed Co.....	Do
Morris & Cummings Dredging Co.....	East Forty-ninth street, Bayonne City, N. J.
National Boat Co.....	Do
*National Grocery Co.....	Communipaw avenue, Jersey City, N. J.
*National Storage Co.....	National Docks, N. J.
Ogden Co., J. E.....	East Forty-ninth street, Bayonne City, N. J.
*Pacific Coast Borax Co.....	Constable Hook, N. J.
*Packard Co., R. G.....	East Twenty-second street, Bayonne City, N. J.
*Standard Oil Co.....	Bayonne City, N. J.
Do.....	Constable Hook, N. J.
*Standard Oil Co. (Eagle Wks.).....	National Docks, N. J.
*Star Expansion Bolt Co.....	East Forty-ninth street, Bayonne City, N. J.
*Vacuum Oil Co.....	Constable Hook, N. J.

\*Industries having this reference prefixed have track connection with National Docks Ry.

APPENDIX G.

*Statement showing tonnage of eastbound and westbound freight handled at the New York City stations of the New York Central Railroad and the West Shore Railroad during the calendar year 1916; filed in record as Kallman Exhibit 10½.*

Station.	East-bound.	West-bound.	Total.
One hundred and thirtieth street; Forty-second street; Thirty-third street; St. John's park; Desbrosses street; Franklin street; Barclay street; pier 4, East River; pier 34, East River.....	Tons. 2,547,578	Tons. 889,708	Tons. 3,437,286
	Both eastbound and westbound.		
	Local traffic.	Lighterage traffic.	
Sixtieth street.....	Tons. 45,639	Tons. 2,130,170	2,175,809
Total for all stations One hundred and thirtieth street and south.....			5,613,095
	East-bound.	West-bound.	
Westchester avenue.....	Tons. 509,486	Tons. 210,226	719,712
Grand total.....			6,332,807

# APPENDIX H.

## Commutation travel to New York City, 1900-1916.

[Based on 60-trip monthly commutation tickets, unless otherwise stated. The index number indicates the relative increase in travel over the yearly average in 1900-1903 taken as 100.]

### NEW YORK RAILROADS

Year.	Long Island R. R.			New York Central R. R. (including West Shore R. R.).			New York, New Haven & Hartford R. R.	
	Total ticket sales.	Average per month.	Index number.	Total ticket sales.	Average per month.	Index number.	Total trips in and out of Grand Central terminal.	Index number.
1900.....	150,000	4,167	100	82,681	91.02	74	74	98.56
1901.....				91,987	101.27	48	48	98.87
1902.....				87,880	107.70	98	98	106.47
1903.....				101,780	112.01	93	93	118.04
1904.....				107,083	117.98	93	93	117.87
1905.....	78,644	8,887	158.28	120,637	132.79	94	94	128.67
1906.....	88,794	7,389	177.66	120,380	143.42	98	98	128.72
1907.....	106,208	8,851	212.41	116,034	127.74	94	94	152.60
1908.....	108,429	9,036	216.85	108,565	117.81	90	90	170.02
1909.....	128,373	10,489	251.72	119,077	131.08	90	90	184.18
1910.....	142,427	11,869	284.83	124,441	136.98	96	96	184.76
1911.....	162,818	13,568	324.60	128,263	142.29	17	17	179.18
1912.....	182,048	15,170	364.05	141,475	155.75	64	64	178.64
1913.....	203,890	16,990	407.73	154,851	170.48	80	80	170.75
1914.....	216,728	18,060	433.41	161,890	178.31	10	10	174.75
1915.....	226,301	18,866	452.75	187,145	189.15	25	25	184.22
1916.....	254,808	21,233	506.55	191,671	211.00	61	61	186.48

\* Estimated average.

\* For 11 months.

The corresponding increase in New Jersey suburban travel in and out of New York is as follows:

(Whitney's Exhibit I.)

### NEW JERSEY RAILROADS.

	Central R. R. of New Jersey.			Erie; Lehigh Valley R. R. Co.		Delaware, Lackawanna & Western R. R.	
	Total ticket sales.	Average per month.	Index number.	Total ticket sales.	Total ticket sales.	Total trips in and out of Grand Central terminal.	Index number.
1900.....	53,011	4,834	97.17			6,631,080	92.84
1901.....	58,532	4,869	100.20			7,141,992	99.66
1902.....	54,834	4,578	103.65			7,724,360	107.80
1903.....	57,680	4,807	107.78			8,302,130	115.86
1904.....	61,616	5,135	113.13			8,836,886	123.35
1905.....	67,169	5,597	125.49			9,554,024	133.33
1906.....	78,033	6,503	145.61			10,553,196	147.97
1907.....	86,000	7,115	159.53			11,549,553	161.15
1908.....	96,647	7,212	161.70			12,236,124	170.76
1909.....	96,554	7,539	168.79			13,522,013	188.70
1910.....	98,700	7,031	168.65	234,849	1,401	15,855,240	193.35
1911.....	94,488	7,715	172.98	239,188	1,285	18,102,460	193.66
1912.....	96,474	8,086	176.86	245,656	1,313	19,767,120	178.17
1913.....	96,378	8,039	180.25	251,900	1,281	22,573,760	179.08
1914.....	98,828	8,184	183.50	264,807	1,356	22,774,070	178.28
1915.....	98,948	8,239	186.75	257,000	1,278	22,847,460	179.29
1916.....	106,199	8,850	198.43	247,120	1,145	23,348,720	186.29

\* Number of passengers carried between New York City and points in New Jersey as computed from 10, 40, 80, and 60 trip tickets sold. (Bureau of Statistics and Accounts, Jan. 15, 1917.)

\* For 11 months.



## **APPENDIX J.**

### **CONNECTIONS BETWEEN TRUNK LINES AT OR NEAR NEW YORK HARBOR TERMINALS.**

#### **Lehigh Valley :**

P. R. R. Direct connection at Point of Rocks, near Jersey City, now used for interchange of freight.

C. R. R. of N. J. Has certain trackage rights over portion of L. V. R. R. near Jersey City-Clairemont to National Junction.

West Shore. Direct connection just south of Newark avenue and Seventh street, Jersey City.

Lackawanna. No direct connection near terminal, but certain traffic interchanged under through rates by car floats.

Erie. No direct connection, but freight interchanged under joint rates by using P. R. R. tracks at Marion (Croxtan).

#### **C. R. R. of N. J. :**

West Shore. No connection, but freight interchanged by using L. V. for short distance at Communipaw. Joint rates published.

Lackawanna. No direct connection near terminal, but certain traffic interchanged under joint rates by car floats.

Erie. No connection near terminal, but certain traffic interchanged under joint rates by car floats.

L. V. R. R. Direct connection near terminal and C. R. R. has trackage rights over portion of L. V. R. R., Clairemont to National Junction.

#### **Pennsylvania :**

L. V. R. R. Direct connection at Point of Rocks, near Jersey City, now used for interchange of freight.

Erie. Direct connection at Marion (Croxtan) in western part of Jersey City.

Lackawanna. Direct connection at Kearney Junction, near Harrison.

West Shore. Direct connection at Newark avenue and Seventh street, Jersey City, with Harsimus Cove branch. Is used for interchange.<sup>1</sup>

#### **Erie :**

West Shore. Direct connection at Weehawken.<sup>1</sup>

Pennsylvania. Direct connection at Marion (Croxtan) in western part of Jersey City.

Lackawanna. Direct connection at Bergen Junction, near Hoboken.<sup>1</sup>

C. R. R. of N. J. No direct connection, but certain traffic interchanged under joint rates by car floats.

Lehigh Valley. No direct connection, but certain traffic interchanged under joint rates by using P. R. R. tracks at Marion (Croxtan).

#### **Lackawanna :**

Erie. Direct connection at Bergen Junction, near Hoboken.<sup>1</sup>

P. R. R. Direct connection at Kearny Junction, near Harrison.

C. R. R. No direct connection near terminal, but certain traffic interchanged under joint rates by car floats.

L. V. R. R. No direct connection near terminal, but certain traffic interchanged under joint rates by car floats.

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<sup>1</sup> Switching charges already published on certain traffic.

**West Shore:**

**Erie.** Direct connection at Weehawken.<sup>1</sup>

**P. R. R.** Direct connection at Newark avenue and Seventh street with Harsimus Cove branch. Also at Brunswick street. Is used for interchange.<sup>1</sup>

**Lehigh Valley.** Direct connection just south of Newark avenue and Seventh street, Jersey City. Used for through freight under joint rates.

**C. R. R. of N. J.** No connection, but freight interchanged by using L. V. for short distance at Communipaw. Joint rates published.

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<sup>1</sup> Switching charges already published on certain traffic.

## COAL TO SOUTH DAKOTA.

No. 5622.

### IN THE MATTER OF RATES ON COAL, CARLOADS, FROM POINTS IN WYOMING AND MONTANA TO POINTS IN SOUTH DAKOTA.

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December 17, 1917.

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1. In general rates should be a medium for effecting the movement of traffic and should not be erected as a barrier between a consuming point and a source of supply.
2. Finding of the original report, that the present rates on coal in carloads from certain Wyoming coal mines to South Dakota points are unreasonable, reaffirmed and reasonable rates prescribed for the future.
3. Petition for rehearing denied.

Same appearances as in the original report.

#### REPORT OF THE COMMISSION ON PETITION FOR REHEARING.

HARLAN, *Commissioner*:

The record in this proceeding is before us again on a petition for rehearing filed in behalf of two of the defendant carriers, namely, the Chicago & North Western Railway Company and the Chicago, Milwaukee & St. Paul Railway Company. The other three principal defendants, the Union Pacific Railroad Company, the Chicago, Burlington & Quincy Railroad Company, and the Oregon Short Line Railroad Company, did not join in the application. In considering the several points presented by the petition, a careful and somewhat exhaustive reexamination of the evidence has been made.

The petition comments upon the original report, 46 I. C. C., 628, as if the issue there under review was a relationship of rates and as if no issue respecting their reasonableness had been raised in the case; and certain language in the original report is referred to in the petition in support of the view that the findings made by the Commission were restricted to the issue of discrimination. That, however, was not the import and effect of the conclusions announced by the Commission; nor was that the case before us.

The original complaint is contained in a resolution of the legislative assembly of the state of South Dakota directed to this Commission and reciting in substance that the freight rates on coal from mines in the states of Wyoming and Montana to destinations in the

state of South Dakota were so high as practically to exclude the use, within the state of South Dakota, of coal mined in those states, and alleging that such rates, as compared with local rates in the states of Iowa, Illinois, and other states and as compared with interstate rates from other coal-producing sections of the country, were unreasonably high and extortionate. In response to that resolution, the Commission instituted this inquiry respecting the reasonableness of the rates of the defendants for the carriage of coal from designated producing fields in the states of Wyoming and Montana to various points of destination within the state of South Dakota. That being the issue presented counsel for the South Dakota commission in his opening statement before this Commission said:

We have framed our testimony on the theory of attacking the rates from Sheridan and Hudson, Wyo., to points in South Dakota, both west and east of the Missouri River, as being unreasonable, excessive, and unjust.

Moreover, throughout the record made in the course of the investigation the substantial question discussed by the witnesses on either side was as to the reasonableness of the rates on coal from the Wyoming mines into the state of South Dakota. Exhibits were offered in evidence on one side to demonstrate their reasonableness, while the other side offered exhibits in evidence to show that they were unreasonable. On that question much was said of record, in behalf of the complainants, of the materially lower rates to South Dakota points voluntarily maintained by the Milwaukee from mines at Roundup, on its line; and those rates, it is well here to note, were explained by the attorney for the defendants as having been established by the Milwaukee on the general level of the rates into the state of Nebraska theretofore established by the Burlington from mines on its line at Sheridan. It was in that connection more particularly that the rates to Nebraska points from the Wyoming mines were brought into view upon the record; they had been accepted by the Milwaukee as a general guide in fixing its rates from the Roundup mines to points on its line in the neighboring state of South Dakota. The language of counsel is that—

coal rates from Roundup, Mont., into the Dakotas were not established on the theory of meeting coal rates from the head of the lakes, but were devised for the purpose of giving the Roundup producers rates to points on the Milwaukee road in the Dakotas that would equal, for corresponding distances, the rates from the Sheridan mines to stations on the C., B. & Q. R. R.

The Burlington's rates from mines on its line at Sheridan to points of consumption on its rails in the state of Nebraska are also referred to upon the record as voluntary rates; the rates of the North Western to Nebraska points of consumption from mines on its rails at Hudson are likewise explained as voluntary rates. All these rates,

as well as the Milwaukee's rates from Roundup, are not only voluntary rates, but they are materially lower than the rates complained of from the various Wyoming mines into South Dakota. These rate structures were described and referred to of record at some length by various witnesses for the state commission as tending to show that the materially higher rates from the Wyoming mines into South Dakota were excessive and unreasonable in and of themselves and therefore unlawful. In the same connection the density of population in South Dakota and in Nebraska was discussed of record as were other facts tending to show what were the comparative traffic and commercial conditions in the two states. Such factors as these are not infrequently the best available test of the reasonableness of rates under attack.

As just stated, the voluntary rates of the Burlington and the other defendants from the Wyoming mines into Nebraska had been accepted by the Milwaukee as the general basis of its own rates from Roundup to equidistant points in South Dakota; and what is said in the original report, at the points quoted in the petition for rehearing, respecting the submission by the defendant carriers for our approval of rates into South Dakota points not in excess of the rates of the other defendants to equidistant Nebraska points, was not intended as requiring an approximate equalization for the future of the rates from the Wyoming mines into South Dakota with the rates from those mines into Nebraska as a means of eliminating an unlawful discrimination, but rather as indicating the Commission's view upon all the evidence adduced of record as to what for the future would be a reasonable basis of rates from those mines into South Dakota. To the extent, therefore, to which the language of the original report would seem to bear the implication assigned to it by the defendants in their petition for rehearing, namely, of being a finding of unjust discrimination and not a finding of unreasonableness in the rates complained of, it fails to convey the meaning intended and the two defendant carriers by which the petition for rehearing was filed have been left under a misapprehension respecting the conclusions really reached by the Commission. The original report must be understood as embodying a definite finding that a continuance by the defendants for the future of their present rates into South Dakota from the mines in question will impose an unreasonable and unlawful burden upon the traffic and upon the various points of consumption in that state.

Not only are those rates shown upon the record to be unreasonable in and of themselves, but they are shown in fact to be prohibitive. Practically no traffic moves under them. This must necessarily be the case in view of the extent to which they exceed the rates upon

which coal may reach most of the South Dakota points from other mines. The rate from Roundup to Lake Preston, for example, involving a haul of 670 miles over the Milwaukee, is \$3 a ton, while the rate from Sheridan through Rapid City, a distance of but 659 miles, is \$5.94 a ton. The excess of \$2.94 in the latter charge on a haul from Sheridan, 11 miles shorter than the service from Roundup, is most striking; and such differences are characteristic of the general rate situation under consideration. The same condition is observable with respect to the joint rates on coal from Roundup and Hudson into South Dakota. The Milwaukee, originating coal at Roundup, makes a joint rate with the North Western to Huron, in the state of South Dakota, of \$3.81 for a haul of 646 miles, while the North Western, originating coal at Hudson, makes a joint rate with the Milwaukee to Chamberlain, in the state of South Dakota, of \$6.35 for a haul of 645 miles. The consumer in Chamberlain must, therefore, pay a charge of \$2.54 a ton more on coal from Hudson than the consumer at Huron pays on coal from Roundup, the haul being substantially of the same length in both cases.

Comparing the rates from the Wyoming mines to points in Nebraska on the Burlington and on the North Western with the rates to equidistant points in South Dakota, we find that the rate, for example, from Sheridan to Havelock, in the state of Nebraska, a distance of 699 miles, is \$3 for a one-line haul, and the rate to Nickerson, in the same state, a distance of 698 miles, is \$3.35 for a two-line haul. On the other hand, the rate from Hudson to Wolsey, in the state of South Dakota, a distance of 699 miles, is \$5.58 for a one-line haul, and to Mount Vernon, also in the latter state, \$5.75 for a two-line haul of 701 miles.

From any possible view that may be taken, respecting the relative density of traffic and other transportation conditions in the two states, it is obvious that such differences in the rates present elements of discrimination that may not be ignored. The rates mentioned are representative of the entire rate adjustment complained of and show that the present rates on coal from Wyoming producing points into South Dakota are inherently unreasonable and excessive when tested by the rates from the same producing points into Nebraska and by the Milwaukee's voluntary rates from Roundup to points on its own line in South Dakota. There is nothing of record to justify such rates while the record contains abundant evidence requiring us to condemn them. The record perhaps does not warrant a finding that the defendant carriers have divided this general coal-consuming territory between them; nevertheless, the maintenance from the mines at Sheridan and other points in Wyoming of rates into South Dakota that are so much higher than the voluntary rates of the Milwaukee



for greater distances from Roundup has the effect of practically excluding the Wyoming coal from use by South Dakota consumers. Those rates are substantially prohibitive and coal can not and does not move under them in any appreciable volume. On a number of occasions we have said that dealers and consumers at a given point are entitled to draw their supplies from the market that is most advantageous to themselves, paying for the transportation rates that are reasonable for the service performed. Rates should be a medium for effecting the movement of commerce from one point to another and no carrier has the right, by erecting barriers of prohibitive rates, to restrict the sources from which a consuming point may supply its needs. *Cardiff Coal Co. v. C., M. & St. P. Ry. Co.*, 13 I. C. C., 460, 467; *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.*, 14 I. C. C., 364, 367; *Chamber of Commerce of Milwaukee v. C., R. I. & P. Ry. Co.*, 15 I. C. C., 460, 465.

Upon a further careful review, in the light of the petition for rehearing, of all the facts and circumstances appearing of record, we reaffirm the finding of the original report as to the unreasonableness in and of themselves of the rates of the defendants to points in South Dakota. The petition for rehearing must therefore be denied.

The original report was served on the parties defendant on September 13, 1917. In it the defendants were required within 60 days from that date to submit for the Commission's approval a general scheme of rates on lump coal to South Dakota points from the fields in question on the basis suggested in the report, with such modifications as might seem necessary for the purpose of equalizing competitive or other conditions. Instead of pursuing that course, two of the defendants, as heretofore stated, filed this petition for rehearing, while the other three principal defendants remained inactive, neither joining in the petition nor presenting a scheme of rates for our approval as directed. The result is that the communities in behalf of which the state commission filed its complaint are still without a reasonable rate basis on coal from the Wyoming mines. Under these circumstances, and in view of the winter conditions now prevailing and of the urgent need of coal at those points, we shall enter an order to give effect to the conclusions reached and announced in the original report and here reaffirmed. With this end in view a careful reexamination of the present rate structures has been made in the light of all the evidence of record.

As heretofore stated, in *Sheridan Chamber of Commerce v. C., B. & Q. R. R. Co.*, 26 I. C. C., 638, the reasonableness of the rates from these Wyoming mines to South Dakota points east of the Missouri River was not in issue; but it appears in this proceeding that the joint rates from Sheridan and Kirby to Rapid City and Miles

City are satisfactory to the shippers. This is true also of the North Western's single-line rates from Hudson and Glenrock to Rapid City. We have thought, therefore, that reasonable rates for the future to South Dakota destinations on the North Western and on the Milwaukee east of Rapid City and Miles City should be constructed by adding reasonable proportional rates from those gateways, this being the course suggested in our original report (*id.*, 640). The order to be entered will therefore require that within 30 days from the service thereof, joint or local through rates on lump coal shall be established by the defendants from the mines at Sheridan and Kirby, and from the mines at Hudson and Glenrock, through Rapid City or Miles City, as the coal may be routed, to all points in South Dakota on the Chicago & North Western Railway and the Chicago, Milwaukee & St. Paul Railway, and on the lines of their respective connections, to which through routes are now open, by adding to the present rates from the originating points named to Rapid City or Miles City, for the added haul beyond those gateways not to exceed, for the first 50 miles, 10 cents a ton, net or gross as heretofore rated, for each 10 miles or fraction thereof; for the second 50 miles 8 cents a ton for each 10 miles or fraction thereof; for the third 50 miles 6 cents a ton for each 10 miles or fraction thereof; for the fourth 50 miles 4 cents a ton for each 10 miles or fraction thereof; and for each additional 10 miles or fraction thereof 2 cents a ton. For the purpose of equalizing competitive or other conditions, such modifications may be made as are deemed necessary. The rates herein fixed to South Dakota destinations should be observed as the maximum rates at all intermediate points, so as to obviate violations of the fourth section.

We adhere to the finding in our original report, page 640, *supra*, that the rates on lump coal from Glenrock to South Dakota for the future should be on a basis not less than 50 cents lower than the rates from Hudson to the same destinations.

The defendants made some point of the fact that much of this traffic requires a two-line haul, and that in some instances three lines participate in the carriage. In *Sheridan Chamber of Commerce v. C., B. & Q. R. R. Co.*, *supra*, the two-line service was disregarded in the rates that were there required. Moreover, an increase in rate because two or more carriers participate in the haul is not characteristic of the joint rate structures of the defendants themselves on Wyoming coal to Nebraska and South Dakota points. In particular cases rates may properly be increased because two or more carriers participate in the movement, and in some such cases the Commission itself has approved such rates. That has not, however, been laid down as a principle generally applicable to two-line hauls. For such

a haul each of the two participating carriers escapes one terminal service, and where three lines participate, the intermediate carrier escapes any terminal service. Under all the circumstances no account has been taken, in the rates that we now require the defendants to establish herein, of the fact that on much of the traffic two or more carriers participate in the haul.

While the rates of the Union Pacific from the mines on its rails at Rock Springs and Hanna, and of the Oregon Short Line from its mines at Cumberland, to South Dakota destinations are more or less involved in this proceeding, there is not sufficient evidence of record to justify an order against those originating lines. In that connection it should be noted that in his opening statement, to which reference has been made, counsel for the South Dakota railroad commission said:

of course the rates from Roundup, Mont., on the Chicago, Milwaukee & St. Paul, and Rock Springs, Wyo., on the Union Pacific, are also involved, but we are directing our main attack against the rates from Sheridan, Wyo.

Moreover the record made at the hearing relates almost exclusively to the situation at Sheridan and Hudson.

An appropriate order will be entered to give effect to the conclusions reached and announced in this proceeding.

47 I. C. C.

# UNIFICATION OF RAILROAD OPERATION.

December 1, 1917.

## SPECIAL REPORT OF THE COMMISSION.

**HALL, Chairman:**

*To the Senate and House of Representatives:*

The act to regulate commerce requires the Commission to transmit to the Congress such recommendations as to additional legislation relating to regulation of commerce as the Commission may deem necessary. Under this mandate the Commission submits the following special report, supplementing its annual report, with reference to transportation conditions as affecting and affected by the war in which the United States is now engaged:

The railroads of the country came into being under the stimulus of competition. From the outset their operation and development have been responsive to a competition which has grown with the growth of population and industry. This competitive influence has been jealously guarded and fostered by state laws and constitutions as well as by the federal law. The keenness of rivalry naturally drew to the front those who were quick to seize and resolute to retain every available point of vantage for their respective roads. Terminals, if confined to exclusive use, were not only of strategic importance but profit-yielding assets. Out of competition grew rate wars, pooling, mergers, and consolidation into systems, as well as the rebating and other preferential treatment of shippers which the act to regulate commerce was primarily framed to prevent.

In that act the Congress, accepting the competitive principle as salutary, has thrown about it prohibitions against compacts for the pooling of freights or divisions of earnings of different and competing railroads, and, while the original act is but the nucleus of the act we now administer, that prohibition has remained unchanged.

But original act and successive amendments were alike framed in times of peace and for times of peace. They looked to protection of the shipper and the public against unjust or unfair treatment by the carrier, and not to protection of the nation and its commerce in time of war by utilization of all the forces and resources of its transportation systems to their fullest extent.

Since the outbreak of the war in Europe, and especially since this country was drawn into that war, it has become increasingly clear that unification in the operation of our railroads during the period

of conflict is indispensable to their fullest utilization for the national defense and welfare. They must be drawn, like the individual, from the pursuits of peace and mobilized to win the war. This unification can be effected in one of two ways, and we see but two.

The first is operation as a unit by the carriers themselves. In the effort along this line initiated early in this year they are restricted by state and federal law, and the idea is the antithesis of that which heretofore has controlled their activities. Their past operations have been competitive, although since the Hepburn act, and especially since the Mann-Elkins act, the prescription by this Commission of reasonable maximum rates and charges for rail carriers subject to the act, and the exercise of its power to require abatement of unjust discrimination or undue prejudice, have in great degree restricted that competition to the field of service. But whether or not perpetuation of the competitive influence is desirable under a system of government regulation, it is apparent that operation of our railroads as a unit involves the surrender by each of exclusive use of terminal facilities, surrender at times of profitable traffic to other carriers, and acceptance of less profitable traffic, with resultant loss of revenue, wherever economy of movement or greater freedom from congestion would dictate that course if the various carriers were in fact but one.

The alternative is operation as a unit by the President during the period of the war, as a war measure, under the war powers vested in him by the constitution and those which have been or may be conferred by the Congress.

As bearing upon the alternatives thus stated it will be recalled that since the beginning of the war in 1914 the traffic offered to and moved by the railroads has increased enormously. Prior thereto there had been occasional periods of car shortage, usually restricted in territory, but it may be said that from 1907 down to 1916 the number of cars in the country exceeded the demand. This subject is treated in our annual report.

The sudden, unforeseen, and unprecedented demand for transportation occasioned by the war placed a strain upon the facilities and equipment of the railroads which they were not and are not prepared to meet. There was created a need for immediate and extensive additions to existing facilities and equipment. This need is coincident with demands upon capital, as well as upon labor, manufactures, and natural resources, such as we have never known. Important additions and betterments will require new capital.

The railroads propose essentially that we allow increases in freight rates of such magnitude that their increased earnings will attract investors, by dividends declared or by the prospect of dividends, in

competition with securities issued by federal, state, and municipal governments, public utility corporations, and industries organized and operating primarily for gain as distinguished from public service. Some of the latter have yielded large profits since the outbreak of the war.

An attempt to secure new capital would come at a time when the rising cost of living has made it difficult for those dependent for support upon their earnings to meet their current expenses; after the absorption by American capital of two-thirds of the American securities owned abroad prior to August 1, 1914, the railroad securities returned to this country alone amounting to from \$1,700,000,000 to \$2,000,000,000; after financing in this country of loans to our present allies; and after subscription for almost \$6,000,000,000 of liberty loan bonds.

Even if the railroads have more money, the immediate construction of necessary facilities and equipment could not readily be effective. Labor is scarce and the cost is mounting. So with materials and supplies. Car and locomotive builders are largely engaged in producing equipment needed abroad, both by our allies and by our own forces, in the conduct of the war. The steel and other materials needed for such construction, as well as the labor, are also needed in other phases of the conflict. Under such conditions and pending the acquisition of such additional facilities and equipment it is indispensable that those now in existence should be used to their fullest capacity, primarily for the uses which are most vital to the country's defense and welfare, but without unnecessary hindrance to the industry and commerce of our people, upon which their ability to contribute toward the success of the war so largely depends.

The act to regulate commerce was not enacted to meet such a situation. The carriers have the right to demand at our hands, and it is our duty to approve, just and reasonable rates sufficient to yield fair returns upon the value of the property devoted to public use after necessary expenditures for wages, fuel, and supplies, reasonable expenditures for maintenance, renewals, and betterments properly chargeable to operating expenses, and appropriate depreciation. Measured in dollars, the gross revenues of the carriers during the past and current fiscal years exceed any in their history. But what the dollar will buy in labor, material, and supplies is substantially less.

We are sensible of the vital and imperative need of the hour that our railroads shall not be permitted to become less efficient or less sufficient. We realize the gravity of a serious breakdown of our transportation facilities. It is unthinkable that this breakdown would be permitted if it could be prevented. Increased charges for



carriage, if found necessary to take care of unavoidable increases in operating expenses, would not at this time bring new capital on reasonable terms in important sums.

In our opinion the situation does not permit of temporizing. All energies must be devoted to bringing the war to a successful conclusion, and to that end it is necessary that our transportation systems be placed and kept on the plane of highest efficiency. This can only be secured through unification of their operation during the period of the war.

If the unification is to be effected by the carriers they should be enabled to effect it in a lawful way. To that end, in our judgment, the operation of the antitrust laws, except in respect of consolidations or mergers of parallel and competing lines, as applied to rail-and-water carriers subject to the act to regulate commerce, and of the antipooling provision of section 5 of that act, should be suspended during the period of the war, and until further action by the Congress. In addition, they should be provided from the government treasury with financial assistance in the form of loans or advances for capital purposes in such amounts, on such conditions, and under such supervision of expenditure as may be determined by appropriate authority. As a necessary concomitant the regulation of security issues of common carriers engaged in interstate commerce should be vested in some appropriate body, as has been recommended in our annual reports. The rights of shippers for reasonable rates and non-discriminatory service under the present jurisdiction of the Commission need not be seriously interfered with by such unified control. Some elastic provisions for establishment of new routes would probably be needed.

If the other alternative be adopted and the President operates the railroads as a unit during the period of the war, there should be, in our opinion, suitable guaranty to each carrier of an adequate annual return for use of the property, as well as of its upkeep and maintenance during operation, with provision for fair terms on which improvements and betterments made by the President during the period of his operation could be paid for by the carrier upon return to it of the property after expiration of that period.

**McCHORD, Commissioner:**

*To the Senate and House of Representatives:*

The special report of the majority of the Commission leaves unsaid some things which should be plainly stated, if prompt and sure relief is to be brought to the present transportation situation. That the lack of adequate railroad service, particularly in eastern territory, is serious at the present time and is a cause of grave concern for the

coming winter months needs no demonstration. Everyone knows it who knows anything about present business conditions. That the industries of the country engaged in making war materials, as well as those not so occupied, require the very best service which can be given by the railroads is also clear. I fully concur in the statement of the majority report that "it is necessary that our transportation systems be placed and kept on the plane of highest efficiency," and also that "this can only be secured through unification of their operation during the period of war." But the majority report takes the position, at least by implication, that this unification may "be effected by the carriers" themselves. With that judgment I wholly disagree.

The carriers' cooperative effort at the present time is in charge of the "executive committee of the special committee on national defense of the American Railway Association." This committee in its public announcements calls itself the railroad war board. It is the fifth committee that the railroads have had in Washington to deal with the transportation situation since November, 1916. The first two of those committees were given no real authority, although the Commission was advised by the executives that they had been given full power, or as it was expressed in the case of the first committee, "all the power of the executives." These committees, therefore, were unable to cope with the situation, despite earnest and praiseworthy efforts of their individual members, who were hampered by the unwillingness of certain railroads, acting under the restraint of executive influence, to carry out their instructions. These facts have been reported by the Commission, *Car Supply Investigation*, 42 I. C. C., 657. In that report both the majority and the minority expressed the view that the situation could be improved by a committee of railroad officers to act in cooperation with this Commission if the committee were given plenary power by all the railroads. In apparent response to that suggestion a third committee was sent to Washington in January, 1917, but it also had not been given the promised power and was therefore not received. In February a fourth committee was sent to Washington to enforce certain car service rules. Not all of the railroads believed that these rules were workable, and hence the agreement giving power to this committee was incomplete and inadequate. With this experience behind it, the American Railway Association, on April 11, 1917, formed its special committee on national defense and centered the chief authority in its executive committee. The resolution by which this committee was formed recites that the railroads of the United States pledged themselves, with the government of the United States,

with the governments of the several states, and with one another, that during the present war they would—

coordinate their operations in a continental railway system, merging during such period all their merely individual and competitive activities in the effort to produce a maximum of national transportation efficiency.

It was understood that the coordination of railway operations in a continental railway system meant that cars would be used interchangeably and sent where they were most needed, that track and terminal facilities would be opened up to all railroads, so as to relieve congestion, and that locomotives would be at once requisitioned from some of the strong and less burdened railroads for use on the important lines which have been unable to give efficient service largely because they were badly in need of motive power. Yet as late as November 24 the carriers' committee made an announcement from which the following is quoted:

The railroads' war board to-day adopted revolutionary measures in order to relieve the congestion of traffic on the eastern railways. It directed "that all available facilities on all railroads east of Chicago be pooled to the extent necessary to furnish maximum freight movement." The effect will be that to the full extent that conditions render it desirable these railways will be operated as a unit, entirely regardless of their ownership and individual interests.

The operating vice presidents of the eastern lines have been appointed a committee to operate as a unit all the lines involved, and have been given instructions and authority to adopt all measures which, in their judgment, may be necessary to relieve the present situation and assure the maximum amount of transportation.

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An important part of the plan adopted for the operation of the eastern lines is that of placing at their disposal the facilities of railways in other territories to such extent as may be necessary.

These measures—the pooling of cars, the operation of railways as a unit, the placing of facilities at the disposal of railways in other territories as needed—are essential steps in the coordination of railway operations "in a continental railway system," using the phrase of the resolution of April 11, but were not taken until November 24.

I do not wish to be understood as saying that the carriers' committee has not accomplished results, nor that the shippers have not cooperated with the carriers to get greater service from the available equipment, for the heavier car loading has been a very material factor of improvement. But our experience with railroad committees during the past year makes me believe that no voluntary committee can accomplish what the situation demands. One of the principal reasons is that the element of self-interest, the traffic influence, is a persistent factor in postponing and resisting measures that seek to disregard individual rights in the effort to secure transportation

results as a whole. The "merely individual and competitive activities" and the established operating practices have their effect, despite directions or recommendations that have no sanction to enforce them except a voluntary agreement which is very general in character. There runs also in the activities of these committees the self-evident purpose to do whatever appears to be necessary to prevent the governmental authority from acting. For these and other reasons which it is not necessary to state I can not concur in a report to the Congress which apparently acquiesces in a continuation of control over the transportation situation by a committee appointed by the carriers themselves. The suggestions with reference to the antitrust laws, the antipooling provision of section 5 of the act, the desirability of government loans for capital purposes, and the regulation of security issues undoubtedly have merit, but in my judgment their enactment into law will not make it possible for any committee appointed by the carriers to secure the full measure of transportation service which the present conditions demand.

The "unification" needed if our transportation systems are to be "placed and kept on the plane of highest efficiency," is the unification of the present diversified governmental control. At the present time there are several federal agencies authorized by law to issue orders or directions with respect to transportation. This Commission, by the car service act, approved May 29, 1917, was given very broad powers to issue summary directions with respect to the movement, distribution, exchange, interchange, and return of cars. The priority director, designated by the President for that purpose under the act approved August 10, 1917, is authorized to direct that traffic essential to the national defense shall be given priority in transportation, and he has made certain orders of that character. The transportation of troops and material of war, under the amendment to the act to regulate commerce, approved August 29, 1916, is required upon the demand of the President to be given preference over all other traffic in time of war, and by direction of the Army and Navy Departments and the United States Shipping Board preference orders have been given for the transportation of a very large tonnage of war materials and supplies of all kinds. The administrations controlling fuel and food, to which adequate transportation is of course vital, have taken an active interest in the movement of those commodities through their appointed agents. Under this diversified control the carriers are not able to meet the requirements of the increasingly heavy tonnage which must be moved. In consequence the industries devoted to war purposes and those engaged in their normal business are suffering. There is no institution in which regularity of operation is more requisite than in transportation, but railroad operation

is approaching a chaotic condition. A coherent plan must be worked out which shall provide for both the needs of the government in the energetic prosecution of the war and the needs of general commerce. It is imperative that war material be given preference in transportation but the financial sinews of war depend in large measure upon the successful operation of our manufacturing plants and business establishments.

I concur in the view that "the situation does not permit of temporizing," but I am convinced that the strong arm of governmental authority is essential if the transportation situation is to be radically improved. That authority must be unified to make possible action that is both vigorous and consistent. If the President elects to exercise the power given him, under the act approved August 29, 1916, to take possession and assume control of the transportation systems, I believe that vastly improved transportation conditions can be promptly secured. For this course legislation assuring the carriers a fair return may be appropriate. If the President does not so elect, it is my judgment that the authority over the regulation of railroad operations now vested in the several agencies referred to, with such amplification as may be necessary, should be promptly centralized by act of Congress. All of the forces now at work upon the problem, including the carriers' executive committee and its numerous subcommittees, could be at once utilized, under a single governmental administrative control.

47 I. C. C.

## CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

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3931. **MARIAN COAL Co. v. D., L. & W. R. R. Co. ET AL.** Through routes and joint rates on coal from Taylor, Pa., to various destinations. *W. P. Boland* for complainant. *R. M. Large, G. S. Patterson, E. D. Robbins, J. F. Schaperkotter, E. H. Boles, J. L. Seager, J. E. Reynolds* and *H. A. Taylor* for defendants. Dismissed without prejudice, December 7, 1917.

4924. **GALVESTON COMMERCIAL ASSO. ET AL. v. A., T. & S. F. Ry. Co. ET AL.** Demurrage charges at Galveston, Texas. *H. H. Maines* for complainants. *H. A. Scandrett* and *H. M. Garwood* for defendants. Dismissed upon motion of complainants, November 30, 1917.

5688. **KENTUCKY DISTILLERIES & WAREHOUSE Co. v. L. & N. R. R. Co. ET AL.** Rates on commodities used in the manufacture of distillery products and on bottles and empty barrels from Louisville, Ky., and Cincinnati, Ohio, to points in Kentucky. *Bruce & Bullitt* for complainant. *N. W. Proctor* and *D. M. Goodwyn* for the L. & N. R. R. Co., defendant. Proceeding discontinued, November 21, 1917.

6128, Subs. Nos. 1 and 2. **VULCAN COAL & MINING Co. v. I. C. R. R. Co.** Furnishing care for the transportation of coal from Belleville and Coulterville, Ill., to interstate destinations. *R. W. Ropiequet* for complainants. *R. V. Fletcher* for defendants. Dismissed on motion of complainant, November 3, 1917.

6647. **APPLICATION OF SOUTHERN PACIFIC Co. AND MORGAN'S LOUISIANA & TEXAS R. R. & S. S. Co.** Operation of steamers on the Bayou Teche. *F. H. Wood* for the S. P. Co. Application withdrawn. Proceeding discontinued, November 21, 1917.

7090. **IN THE MATTER OF EMBARGOES.** Investigation of the rules, regulations and practices of carriers in establishing embargoes. *H. G. Wilson, J. S. Brown, J. C. Jeffery, W. J. Tomkins, J. L. Roney, H. Sheridan, R. S. French, F. E. Stutz, J. C. Lincoln, W. J. Overcocker, E. Vreeland, E. W. Bertholf* and *R. J. O'Brien* for shippers. *O. E. Butterfield, G. E. Simpson, R. L. Burnap, O. F. Clark, J. E. Duval, F. G. Wright, T. H. Burgess, A. H. Lossow, J. F. Porterfield, R. V. Fletcher, H. A. Scandrett, M. B. Casey, A. S. Learoyd, Knapp & Campbell, F. A. Gascoigne, F. L. Ballard, H. W. Biklé, J. R. Talbott, C. B. Phelps, J. E. Reynolds, A. P. Burgwin* and *A. Hale* for respondents. Discontinued, November 16, 1917.

7979. **SEEGAR ET AL. v. A., B. & A. R. R. Co. ET AL.** Rate on oranges from Ocoee, Fla., to Lineville, Ala. No appearances. Transferred to Special Docket for adjustment, November 3, 1917.

8670. **McSHANE LUMBER Co. v. M. & O. R. R. Co. ET AL.** Rate on cross ties from De Soto, Miss., to Belleville, Ontario, Canada. *J. A. Kuhn* for complainant. *H. E. Watts* and *G. M. Entrikin* for Wab. Ry. Co. Transferred to Special Docket for adjustment, November 14, 1917.

8989. **RADINSKY v. C., B. & Q. R. R. Co.** Rate on rags from Butte, Mont., to Denver, Colo. *A. L. Vogl* for complainant. *C. Frankenger* for M. P. Ry. Co. Transferred to Special Docket for adjustment, November 17, 1917.

9083. **O'LEARY PRODUCE Co. v. K. C. & M. Ry. Co. ET AL.** Rate on grapes from Tonitown, Ark., via an interstate route, to Little Rock, Ark. *G. F. Williams* and *A. R.*



*Bragg* for complainant. *R. C. Hobbs, J. M. Souby, B. A. Rogers, S. E. Johnson, and G. E. Schnitzer* for defendants. Dismissed on request of complainant, December 4, 1917.

9288. *COMMERCE CLUB OF ST. JOSEPH, MO. v. G. L. T. CORP. ET AL.* Rates on traffic from points of origin in trunk line territory east of Pittsburgh and Buffalo to the Mississippi River crossings, East Dubuque and East St. Louis, Ill. *W. J. C. Kenyon* for complainant. *P. Gessford, W. J. Mullin, H. A. Clarke, G. W. Sterling, W. C. Snyder, A. H. Lossow, C. G. Austin, jr., F. L. Ballard, H. W. Bickel, G. S. Patterson, S. R. Thomas, W. J. Turner, C. C. Wright, R. H. Widdicombe, R. Griswold, Glennon, Cary, Walker & Howe, G. S. Hobbs, S. S. Perry, W. L. Kinter, L. Mayer, Bradley & Linnell, T. H. Burgess, M. B. Pierce, O. W. Dynes, Winston, Payne, Strawn & Shaw, C. L. Andrus, C. B. Cardy, R. Dunlap, T. J. Norton, H. D. Palmer, H. G. Herbel, F. G. Wright, T. Bond, E. S. Ballard, D. Swift, R. B. Scott, W. A. Parker, R. W. Moore, and W. F. Dickinson* for defendants. Dismissed on motion of complainant, November 17, 1917.

9341. *BATAVIA RUBBER CO. v. A. C. L. R. R. CO. ET AL.* Rates on rubber tires from Batavia and New York, N. Y., to points in southern classification territory. No appearance for complainant. *E. H. Hart* for defendants. Dismissed on request of complainant, December 4, 1917.

9535. *SYRACUSE CHAMBER OF COMMERCE v. N. Y. C. R. R. CO. ET AL.* Joint through class rates between Syracuse, N. Y., and points in New York, New Jersey, and Pennsylvania. *J. R. Clancy* for complainant. *C. Brown, T. H. Burgess, M. B. Pierce, and D. Swift* for defendants. Dismissed on request of complainant, November 3, 1917.

9608. *LINES CO. v. N. Y., N. H. & H. R. R. CO. ET AL.* Rate on cement from Evansville, Pa., to Easthampton, Mass., reconsigned thence to East Walpole, Mass. *D. J. Donaher* for complainant. *W. L. Barnett and L. H. Kentfield* for defendants. Dismissed on request of complainant, December 4, 1917.

9619. *JOSEPH IRON CO. v. C. & L. R. R. CO. ET AL.* Rate on scrap iron from Macon, Ga., to Lebanon, Pa. *H. C. Barnes* for complainant. No appearance for defendants. Complaint satisfied. Dismissed December 4, 1917.

9625. *NYE v. A. C. L. R. R. CO. ET AL.* Charges assessed for the use of special equipment for the transportation of pre-cooled citrus fruits. *E. C. Hoskins* for complainant. *R. W. Moore* for defendants. Dismissed on request of complainant, December 4, 1917.

9648. *CUMBERLAND VALLEY R. R. CO. v. AM. T. & T. CO. ET AL.* Refusal of defendants to make trunk line connection at Chambersburg, Pa., with complainant's private telephone system. *W. C. Carpenter* for complainant. *H. B. F. MacFarland* for defendants. Dismissed on request of complainant, November 24, 1917.

9720. *GOODYEAR TIRE & RUBBER CO. v. A., C. & Y. RY. CO. ET AL.* Increased rating from third class to second class, in official classification, in the rating on packing, rubber or gum compound. *R. G. Kreidler* for complainant. *S. S. Perry, W. J. Larrabee, S. C. Pratt, W. A. Cole, H. D. Howe, T. H. Burgess, M. B. Pierce, W. A. Parker, C. Brown, and J. Stillwell* for defendants. Dismissed without prejudice on request of complainant, January 17, 1918.

9726. *BARTLETT-COLLINS GLASS CO. v. A., T. & S. F. RY. CO. ET AL.* Rates on glass bottles, flasks, demijohns, fruit jars, fruit jar tops, tumblers and jelly glasses, lamp chimneys, lantern globes, tableware, and glassware, n. o. i. b. n., from Sapulpa, Okla., to destinations in New Mexico. *H. C. McCord* for complainant. *B. F. E. Marsh, G. E. Schnitzer and W. M. Powers* for defendants. Complaint satisfactorily adjusted. Dismissed November 6, 1917.

9751. *FEDERAL FOUNDRY SUPPLY CO. v. C., C., C. & ST. L. RY. CO. ET AL.* Rate on foundry products from Cleveland and Cincinnati, Ohio, Detroit, Mich., Pitts-

burgh, Pa., and Chicago, Ill., to San Francisco, Cal., and Seattle, Wash. No appearances. Dismissed on request of complainant, January 14, 1918.

9780. EMPIRE COTTON OIL Co. v. A. C. L. R. R. Co. Rate on peanuts from Banks, Brundige and Elba, Ala., to Bainbridge, Ga. *S. Linthicum* for complainant. No appearance for defendant. Transferred to Special Docket for adjustment, December 15, 1917.

9786. PROVIDENCE ICE Co. v. N. Y., N. H. & H. R. R. Co. Rate on ice from Sterling Junction, Mass., to Rumford, R. I. *W. A. Morgan* for complainant. *S. S. Perry* for defendant. Complaint satisfied. Dismissed January 14, 1918.

9799. GOODYEAR TIRE & RUBBER Co. v. A., C. & Y. Ry. Co. ET AL. Increased official classification rating on rubber boot and shoe findings. *R. G. Kreidler* for complainant. *S. S. Perry, W. J. Larrabee, C. Brown, J. Alton, D. L. Gray, W. A. Parker, H. D. Howe* and *J. Stillwell* for defendants. Dismissed without prejudice on request of complainant, January 17, 1918.

9832. ZELNICKER SUPPLY Co. v. N. O. & N. E. R. R. Co. ET AL. Rate on old rails and fastenings from Hawkes Station, Miss., to Sloans Valley, Ky. *J. D. Fidler* for complainant. *R. W. Moore* for defendants. Dismissed on request of complainant, January 14, 1918.

9839. CALIFORNIA FUEL DEALERS PROTECTIVE ASSO. v. A., T. & S. F. Ry. Co. ET AL. Reweighing of coal from Utah and Colorado mines to California points. *Bishop & Bahler* for complainant. *S. Moore, R. Dunlap, T. J. Norton, E. N. Clark, J. G. McMurry, F. Karr, E. E. Morris, A. S. Halsted, F. H. Wood, C. W. Durbrow, G. D. Squires, F. B. Austin*, and *A. P. Matthew* for defendants. Dismissed on request of complainant, January 14, 1918.

9840. CALIFORNIA FUEL DEALERS PROTECTIVE ASSO. v. A., T. & S. F. Ry. Co. ET AL. Rates on coal from points in Utah and Colorado to points in California. *Bishop & Bahler* for complainant. *S. Moore, E. N. Clark, J. G. McMurry, R. Dunlap, T. J. Norton, A. S. Halsted, F. Karr, E. E. Morris, F. H. Wood, C. W. Durbrow, G. D. Squires, F. B. Austin* and *A. P. Matthew* for defendants. Dismissed on request of complainant, January 14, 1918.

9853. CALIFORNIA FOUNDRYMEN'S ASSO. ET AL. v. A. & V. Ry. Co. ET AL. Rate on pig iron from eastern producing points to California terminals. *Bishop & Bahler* for complainants. *C. S. Burg, A. E. Haid, F. H. Wood, Baker, Botts, Parker & Garwood, R. H. Widdicombe, D. Upthegrove, E. B. Perkins, J. R. Turney, W. A. Colston, W. A. Northcutt, T. J. Freeman, G. Thompson, R. Dunlap, T. J. Norton, O. W. Dynes, Andrews, Shutman, Burns & Logue, R. C. Fulbright, A. P. Matthew, R. W. Moore, A. S. Halsted, C. W. Durbrow, G. D. Squires, F. B. Austin, K. F. Burgess, H. G. Herbel, F. G. Wright* and *W. E. Dickinson* for defendants. Dismissed on request of complainants, January 14, 1918.

9861. FREIGHT BUREAU, MACON CHAMBER OF COMMERCE, MACON, GA. v. A. C. L. R. R. Co. ET AL. Rates on dried beans and peas, canned goods, flour, and dried fruits, from Charleston, S. C., to Macon and Atlanta, Ga., originating at Pacific coast points. *B. Gilham* for complainant. *R. W. Moore* for defendants. Dismissed on request of complainant, January 14, 1918.

9879. FORT SMITH SPELTER Co. v. A. C. R. R. Co. ET AL. Rate on coke breeze from Chattanooga, Tenn., to South Fort Smith, Ark. *C. D. Mowen* for complainant. *H. B. Holbert* for A. C. R. R. Co. Complaint satisfied. Dismissed January 14, 1918.

9895. FOUNDRY SUPPLY MANUFACTURERS ASSO. v. B. & O. R. R. Co. ET AL. Rates on foundry facings and foundry core compounds between points in official classification territory. *B. L. Benfer* for complainant. *S. S. Perry, W. L. Kinter, W. J. Larrabee, E. S. Ballard, J. C. Bills, H. D. Howe, T. H. Burgess, M. B. Pierce, F. L. Ballard, H. W. Biklé, G. S. Patterson, W. A. Parker* and *Squire, Sanders & Dempsey* for defendants. Dismissed on request of complainant, January 14, 1918.

## TABLE OF CASES DISPOSED OF WITHOUT PRINTED REPORT.

	Page.
Akron, C. & Y. Ry. Co., Goodyear Tire & Rubber Co. v. ....	766, 767
Alabama & V. Ry. Co., California Foundrymen's Asso. v. ....	767
American Telephone & Telegraph Co., Cumberland Valley R. R. Co. v. ....	766
Arkansas Central R. R. Co., Fort Smith Spelter Co. v. ....	767
Atchison, T. & S. F. Ry. Co., Bartlett-Collins Glass Co. v. ....	766
Atchison, T. & S. F. Ry. Co., California Fuel Dealers Protective Asso. v. ....	767
Atchison, T. & S. F. Ry. Co., Galveston Commercial Asso. v. ....	765
Atlanta, B. & A. R. R. Co., Seegar v. ....	765
Atlantic C. L. R. R. Co., Batavia Rubber Co. v. ....	766
Atlantic C. L. R. R. Co., Empire Cotton Oil Co. v. ....	767
Atlantic C. L. R. R. Co., Freight Bureau, Macon Chamber of Commerce, Macon, Ga. v. ....	767
Atlantic C. L. R. R. Co., Nye v. ....	766
Baltimore & O. R. R. Co., Foundry Supply Mfrs. Asso. v. ....	767
Bartlett-Collins Glass Co. v. A., T. & S. F. Ry. Co. ....	766
Batavia Rubber Co. v. A. C. L. R. R. Co. ....	766
California Foundrymen's Asso. v. A. & V. Ry. Co. ....	767
California Fuel Dealers Protective Asso. v. A., T. & S. F. Ry. Co. ....	767
Chamber of Commerce of Syracuse v. N. Y. C. R. R. Co. ....	766
Chicago, B. & Q. R. R. Co., Radinsky v. ....	765
Cleveland, C., C. & St. L. Ry. Co., Federal Foundry Supply Co. v. ....	766
Commerce Club of St. Joseph, Mo., v. G. L. T. Corp. ....	766
Commercial Asso. of Galveston v. A., T. & S. F. Ry. Co. ....	765
Cornwall & L. R. R. Co., Joseph Iron Co. v. ....	766
Cumberland Valley R. R. Co. v. Am. T. & T. Co. ....	766
Delaware, L. & W. R. R. Co., Marian Coal Co. v. ....	765
Empire Cotton Oil Co. v. A. C. L. R. R. Co. ....	767
Federal Foundry Supply Co. v. C., C., C. & St. L. Ry. Co. ....	766
Fort Smith Spelter Co. v. A. C. R. R. Co. ....	767
Foundry Supply Mfrs. Asso. v. B. & O. R. R. Co. ....	767
Freight Bureau, Macon Chamber of Commerce, Macon, Ga., v. A. C. L. R. R. Co. ....	767
Galveston Commercial Asso. v. A., T. & S. F. Ry. Co. ....	765
Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co. ....	766, 767
Great Lakes Transit Corp., Commerce Club of St. Joseph, Mo., v. ....	766
Illinois Central R. R. Co., Vulcan Coal & Mining Co. v. ....	765
In re Application of S. P. Co. and M. L. & T. R. R. & S. S. Co. ....	765
In re Embargoes. ....	765
Joseph Iron Co. v. C. & L. R. R. Co. ....	766
Kansas City & M. Ry. Co., O'Leary Produce Co. v. ....	765
Kentucky Distilleries & Warehouse Co. v. L. & N. R. R. Co. ....	765
Lines Co. v. N. Y., N. H. & H. R. R. Co. ....	766
Louisville & N. R. R. Co., Kentucky Distilleries & Warehouse Co. v. ....	765
McShane Lumber Co. v. M. & O. R. R. Co. ....	765
Macon Chamber of Commerce Freight Bureau, Macon, Ga., v. A. C. L. R. R. Co. ....	767
Marian Coal Co. v. D., L. & W. R. R. Co. ....	765
Mobile & O. R. R. Co., McShane Lumber Co. v. ....	765
New Orleans & N. E. R. R. Co., Zelnicker Supply Co. v. ....	767
New York Central R. R. Co., Syracuse Chamber of Commerce v. ....	766
New York, N. H. & H. R. R. Co., Lines Co. v. ....	766

	<b>Page.</b>
New York, N. H. & H. R. R. Co., Providence Ice Co. v.....	767
Nye v. A. C. L. R. R. Co.....	768
O'Leary Produce Co. v. K. C. & M. Ry. Co.....	765
Providence Ice Co. v. N. Y., N. H. & H. R. R. Co.....	767
Radinsky v. C., B. & Q. R. R. Co.....	765
St. Joseph, Mo., Commerce Club v. G. L. T. Corp.....	768
Seegar v. A., B. & A. R. R. Co.....	765
Syracuse Chamber of Commerce v. N. Y. C. R. R. Co.....	768
Vulcan Coal & Mining Co. v. I. C. R. R. Co.....	765
Zelnicker Supply Co. v. N. O. & N. E. R. R. Co.....	767

47 I. C. C.



## REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.

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7864. ALLEN MANUFACTURING Co. v. L. & N. R. R. Co. November 13, 1917. Reparation for \$3,179.51, on shipments of pig iron from Birmingham, Ala., and related points to Nashville, Tenn., on account of unreasonable rates.

8478. CAMERON & Co. v. A. & S. Ry. Co. December 4, 1917. Reparation for \$1,817.28, on shipments of lumber products from north Pacific coast points to Waco and Austin, Tex., on account of unreasonable rate.

8348. HIMMELBERGER-HARRISON LUMBER Co. v. St. L., I. M. & S. Ry. Co. December 4, 1917. Reparation for \$381.50, on account of unreasonable rates on shipments of rough hardwood lumber from Okelona, Ark., to Morehouse, Mo., and re-shipped within the transit period to St. Louis, Mo., and other destinations.

8161. ARWOOD & Co v. C., B. & Q. R. R. Co. December 4, 1917. Reparation for \$100.02, on shipments of hay from Iowa and Missouri points to St. Louis, Mo., and reconsigned to points in the southeast, on account of unreasonable charges.

8781. HOPKINS, HOUGH & MERRILL Co. v. D., L. & W. R. R. Co. December 4, 1917. Reparation for \$885.71, on shipments of anthracite coal from Tamaqua and Nesquehoning, Pa., to Branchville, N. J., on account of unreasonable rates.

9043. SMITH & SONS CARPET Co. v. B. & A. R. R. Co. December 4, 1917. Reparation for \$2,913.64, on shipments of mohair and wool from Boston, East Boston, and East Cambridge, Mass., to Nepperhan, N. Y., on account of unreasonable charges.

7858. BOWIE LUMBER Co. v. M. L. & T. R. R. & S. S. Co. December 4, 1917. Reparation for \$563.85, on shipments of lumber from Ludivine, La., to Bowie, La., there milled in part and reshipped to various interstate destinations, on account of unlawful charges.

8892. HARRISON BROTHERS & Co. v. B. & O. R. R. Co. December 4, 1917. Reparation for \$575.55, on interstate shipments of pyrites cinder from Philadelphia, Pa., to Coatesville, Pa., on account of unreasonable rate.

8261. HILLBRICH & SON Co. v. I. C. R. R. Co. December 4, 1917. Reparation for \$129.94, on shipments of baseball bats from Louisville, Ky., to Dallas and Fort Worth, Tex., on account of unreasonable minimum weight applied.

8396. LA JUNTA MELON & PRODUCE ASSO. v. A., T. & S. F. Ry. Co. December 4, 1917. Reparation for \$1,878.95, on shipments of cantaloupes from La Junta, Colo., to eastern and southeastern points, on account of unreasonable and illegal charges.

7161. BARTLETT HAYWARD Co. v. B. & O. R. R. Co. December 4, 1917. Reparation for \$2,241.11, on account of unlawful and unjustly discriminatory charges on shipments of structural steel, lumber, and contractors' outfits from Baltimore, Md., to Grayland, Ill., and return of contractors' outfits from Grayland, Ill., to Baltimore, Md.

8822. RIVERSIDE PORTLAND CEMENT Co. v. A., T. & S. F. Ry. Co. December 4, 1917. Reparation for \$301.04, on shipments of gypsum from Rito, N. Mex., to Riverside, Cal., on account of unreasonable rate.

5781. LEE Co. v. C., R. I. & P. Ry. Co. January 14, 1918. Reparation for \$125.08, on shipments of creosote oil, from Moline, Ill., to Omaha, Nebr., on account of unreasonable rate.



## 772 REPARATION CASES GRANTED UNDER SUPPLEMENTAL ORDERS.

7652. CHICAGO LUMBER & COAL Co. v. M. L. & T. R. R. & Stra. Co. January 14, 1918. Reparation for \$673.91, on account of unlawful charges on shipments of lumber from Bayou Sale and Baldwin, La., to milling points and reshipped to various interstate destinations.

8037. WICKER v. St. L. & S. F. R. R. Co. January 14, 1918. Reparation for \$1,288.88, on shipments of live stock from New Albany, Miss., to East St. Louis, Ill., on account of unreasonable charges.

8030. TEXAS, OKLAHOMA & EASTERN R. R. Co. v. St. L. & S. F. R. R. Co. January 14, 1918. Reparation for \$1,771.92, on shipments of rails and fastenings from Ayers, La., empty flat cars from St. Louis, Mo., and locomotives and tenders from Philadelphia, Pa., to Valliant, Okla., on account of unreasonable charges.

9013. MADERO v. E. P. & S. W. R. R. Co. January 14, 1918. Reparation for \$2,274.56, on interstate shipments of cattle from Dryden, Tex., to Middlewater, Tex., on account of illegal charges.

7063. PACIFIC FRUIT EXCH. v. A., T. & S. F. Ry. Co. January 14, 1918. Reparation for \$75.76, on shipments of fresh deciduous fruit from California points to Vancouver, British Columbia, and Seattle, Wash., on account of unreasonable and unlawful rates.

8575. PITTSBURGH PLATE GLASS Co. v. St. L. & S. F. R. R. Co. January 14, 1918. Reparation for \$3,076.21, on shipments of fuel oil from Okmulgee, Okla., to Crystal City, Mo., on account of unreasonable rate.

7861. KERN & SONS v. C., M. & St. P. Ry. Co. January 14, 1918. Reparation for \$24.45, on shipment of flour and feed from Milwaukee, Wis., to Dayton, Va., re-consigned in transit to Bridgewater, Va., on account of unreasonable charges.

8925. HOUSTON TIE & LUMBER Co. v. M. L. & T. R. R. & S. S. Co. January 14, 1918. Reparation for \$2,410.91, on shipments of crossties from points in Louisiana to Smithville, Brookshire, and Spring, Tex., on account of unreasonable rates.

7648. AMERICAN LAND, TIMBER & STAVE Co. v. St. L. & S. F. R. R. Co. January 14, 1918. Reparation for \$420.24, on shipments of staves and headings from Pettigrew, Prairie Grove, and Dutton, Ark., to Philadelphia, Pa., New York, Brooklyn, and Syracuse, N. Y., on account of unreasonable rates.

7876 and 7911. STANDARD LUMBER Co. v. S. GA. Ry. Co., and STANDARD LUMBER Co. v. S. GA. Ry. Co. January 14, 1918. Reparation for \$10.70, on shipments of lumber from Baden, Ga., to Columbia, S. C., and from Shore, Ga., to Anderson, S. C., on account of unreasonable rates.

3056. COMMERCIAL CLUB OF OMAHA v. A. & S. R. Ry. Co. January 14, 1918. Reparation to McShane Lumber Co. for \$91.04, on shipments of yellow-pine lumber from Saratoga and Dearborn, Tex., to Omaha and South Omaha, Nebr., on account of unreasonable charges.

8550. GULF REFINING Co. v. St. L., S. F. & T. Ry. Co. January 14, 1918. Reparation for \$2,631.18, on shipments of naphtha from North Fort Worth, Tex., to Kiefer, Okla., on account of unreasonable rate.

8247. CADILLAC LUMBER EXCH. v. A. A. R. R. Co. January 14, 1918. Reparation for \$39.50, on shipments of hardwood flooring from Cadillac, Mich., to Salt Lake City, Utah, on account of unreasonable rates.

8145. HAWKEYE OIL Co. v. C., G. W. R. R. Co. January 14, 1918. Reparation for \$1,077.79, on shipments of low-grade petroleum products from Coffeyville, Kans., to Waterloo and Charles City, Iowa, on account of illegal rates.

NOTE.—The amount of reparation awarded in the above cases aggregates \$30,960.23.

## **ORDERS ISSUED INVOLVING REPARATION IN INFORMAL PLEADINGS FOR THE YEAR ENDED OCTOBER 31, 1917.**

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**For the year ended October 31, 1917, the number of orders issued involving reparation in informal pleadings was 5,359, the number of claims denied or otherwise closed during that period was 509, and the amount of reparation awarded was \$1,346,349.34.**

**47 I. C. C.**



## TABLE OF COMMODITIES.

---

[The number in parentheses following citation indicates where commodity is considered.]

**APPLES.** Arkansas to Muskogee, Okla., 239.

**BARK, TAN.** Baker mine switch, Tenn. Refusal to place cars for loading, 73.

**BEARINGS, STEEL ROLLER.** Official classification territory. Ratings, 99.

**BEER:**

El Paso, Tex., from St. Louis, Mo., and Milwaukee, Wis., 64.

La Crosse, Wis., to Lemmon, S. Dak., 233.

**BLANKETS, HORSE.** Official classification territory. Classification, 62.

**BOARD, WOOD-PULP.** Beaver Falls, N. Y., to various destinations, 79.

**BOX MATERIAL.** Oregon to California, 372.

**BOX SHOOK.** See Shook.

**BOXES, WOOD-PULP BOARD.** Beaver Falls, N. Y., to various destinations, 79.

**BRICK.** Chanute, Kans., to Jefferson City, Mo., 217.

**BRIDGE BUILDERS' OUTFIT.** Kenova, W. Va., to Greenville, N. J., 235.

**CANNED GOODS.** San Francisco, Cal., to Portland and Astoria, Oreg., 285.

**CANS, EMPTY TIN:**

Baltimore, Md., to North Wilkesboro, Elkin, Ronda, and Roaring River, N. C., 85.

Baltimore, Md., to Philadelphia, Pa., Camden, N. J., Hickman and Seaford, Del.,

Hancock, W. Va., Melfa, Va., and Bethlehem, Md., 82.

**CASINGS, SAUSAGE.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**CATTLE:**

Birmingham, Ala., from Kentucky and Tennessee, 524.

Clay Center, Kans, to Kansas City, Mo., 261.

**CEMENT:**

Cape Girardeau, Mo., to Illinois, 204.

Nebraska from various points, 160.

**CHEEEECLOTH, SECOND HAND.** Windsor Locks, Conn., to Quincy, Fla., 243.

**CLASS AND COMMODITY RATES:**

Beaver Falls, N. Y., to various destinations, 79.

C. F. A. territory to and from Ashland, Louisville, and other Kentucky points.  
Fourth Section, 576.

Michigan to and from eastern territory, 409.

Tuscaloosa, Ala., from Ohio River crossings, St. Louis, Mo., Memphis, Tenn.,  
and other lower Mississippi River crossings, from Gulf, south Atlantic, and  
Virginia ports, from eastern cities and interior eastern points, and from Buffalo-  
Pittsburgh territory, 483.

**CLIPPINGS, TAILORS' WOOLEN.** Official classification territory. Ratings, 91.

**COAL:**

Figart, Pa. Refusal to supply cars, 403.

Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Missouri, and Kansas.  
Tolerance, 549.

Wyoming to South Dakota, 750.

**COAL, BITUMINOUS:**

Colorado to Sweetwater and other Nebraska points, 557.

Milwaukee, Wis. Switching, 41.

**COAL, BUNKER.** Gulf ports. Free time, 162 (189).

**COAL, NUT:**

Colorado to Sweetwater and other Nebraska points, 557.

Krebs, Okla., to Brown Spur, Kans., 25.

Scammon, Kans., to Abilene, Kans., 52.

**COAL, PEA.** Colorado to Sweetwater and other Nebraska points, 557.

**COAL, SLACK.** Colorado to Sweetwater and other Nebraska points, 557.

**COKE:**

Connellsville, Pa., and Fairmont, W. Va., districts, to Galion, Marion, Bucyrus, and Crestline, Ohio, 136.

Stonega and other Virginia points to Alabama, Florida, Georgia, Kentucky, Louisiana, South Carolina, and Tennessee. Through routes and joint rates, 282.

**CORN:**

Iowa to Minneapolis, Minn., reshipped to California, 59.

Kansas City, Mo., from Green Valley and Cottonwood, Minn., reconsigned at Sioux City, Iowa, 74.

**CORN, BULK.** Thief River Falls and Crookston, Minn., from Danvers, Appleton, and De Graff, Minn., 581.

**COTTON.** Davidson and Snyder, Okla., to Texas City, Tex., and New Orleans, La., concentrated and compressed at Lawton, Okla., 8.

**CYLINDERS, ACETYLENE GAS.** Speedway, Ind., to Atlanta, Ga., 22.

**DOORS.** Wausau, Wis., to Girardville, Pa., 12.

**FASTENERS, WOOD JOINT.** Western classification territory. Classification, 18.

**FEED, LIVE STOCK.** Waukegan, Ill., to western trunk line territory, 10.

**FEED, POULTRY.** Waukegan, Ill., to western trunk line territory, 10.

**FERTILIZER HORN.** See Horn.

**FILLERS, EGG-CASE.** Coffeyville, Kans., to Gentry, Ark., 84.

**FITTINGS, PIPE.** New York to Eagle Pass, Tex., destined to Agujita, Sabinas, and Lampacitos, Mexico, 219.

**FIXTURES, STOVE.** Chicago, Ill., to St. Paul and Duluth, Minn., 109 (111-112).

**FLAXSEED.** Mott, N. Dak., to Minneapolis, Minn., 32.

**FLOUR:**

Great Falls, Mont., to North Dakota, and St. Paul and Minneapolis, Minn.. Seattle and Tacoma, Wash., and Portland, Oreg., 263 (264).

New York harbor. Free time, 162 (173).

New York harbor. Storage and free time, 141 (143).

**FOREST PRODUCTS.** Sioux City, Iowa, from Missouri, Oklahoma, Arkansas, Texas, Louisiana, Tennessee, Mississippi, and Alabama, 347.

**FUR SCRAP.** See Scrap.

**FURNACES, IRON OR STEEL.** Chicago, Ill., to St. Paul and Duluth, Minn., 109 (111-112).

**GRAIN:**

Michigan, milled in transit, and reshipped to Toledo and Bryan, Ohio, and points south and east thereof, 104.

Minneapolis, Minn. Switching charges, 583.

Pittsburgh, Pa. Diversion or reconsignment, 590.

South Dakota to Omaha, Nebr., and Council Bluffs, Iowa. Cars off line, 532.

Vermilion, Burbank, Canton, Howard, Jefferson, and Dell Rapids, S. Dak., to various destinations. Car distribution, 475.

**GRANITE.** Official classification territory. Ratings, 91 (95).

**GUARDS, INCANDESCENT LAMP.** Official and western classification territories. Classification, 36.

**HAIR, WASTE AND REFUSE.** Norfolk, Va., from Connecticut and Massachusetts, 467.

**HOGS:**

Birmingham, Ala., from Kentucky and Tennessee, 524.

Chicago and East St. Louis, Ill., Denver, Colo., St. Louis, Kansas City, and St. Joseph, Mo., Omaha, Nebr., Sioux City, Iowa, Milwaukee, Wis., and St. Paul, Minn. Transit rules and regulations, 380.

**HORN, FERTILIZER.** Norfolk, Va., from Connecticut and Massachusetts, 467.

**HORSES:**

Birmingham, Ala., from Kentucky and Tennessee, 524.

Montgomery, Ala., from St. Louis, Mo., East St. Louis, Ill., Evansville, Ind., Kentucky, Tennessee, and Ohio River crossings, 524.

**HOUSEHOLD GOODS.** Fairmont, W. Va., to Portland, Oreg., 210.

**IRON ARTICLES:**

C. F. A. territory to Minneapolis, St. Paul, and Duluth, Minn., 109.

Iowa from Chicago and Peoria, Ill., St. Louis and Kansas City, Mo., St. Paul, Minneapolis, and Duluth, Minn., Mississippi River, and points east of Indiana-Illinois state line, 109 (118).

Western trunk line territory from Chicago and Peoria, Ill., St. Louis and Kansas City, Mo., Minneapolis, St. Paul, and Duluth, Minn., and Mississippi River crossings, 109.

**IRON, SCRAP.** Elsdon, Ill., to East Chicago, Ind., 215.

**LAMP GUARDS.** See Guards.

**LARD.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**LARD SUBSTITUTE.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**LEATHER, HARNESS.** Sheboygan Falls, Wis., to St. Louis, Mo., 16.

**LEATHER, SCRAP WASTE.** Norfolk, Va., from Connecticut and Massachusetts, 467.

**LIMESTONE.** Official classification territory. Ratings, 91 (96).

**LIVE STOCK:**

Birmingham and Montgomery, Ala., from St. Louis, Mo., East St. Louis, Ill., Kentucky, Tennessee, and Ohio River crossings, 524.

Missouri to East St. Louis and National Stock Yards, Ill., 287.

Official and southern classification territories. Classification, minimum weights and standard or basic values, 335.

Sioux City, Iowa, from southwestern Minnesota. Free transportation of care takers, 279.

**LOGS, LOW GRADE CEDAR.** Atlanta, Ga., from Alabama, Tennessee, and Georgia, 39.

**LOGS, SAW.** Taylor's Rapids, Wis., to Peshtigo, Wis., 6.

**LUMBER:**

Accomac and Northampton counties, Va., to Philadelphia, Pa., and Wilmington, Del., 54.

Carryville, Ark., to Cairo, Ill., 225.

Chester, Va., to New York, Pennsylvania, Ohio, and Michigan, west of Buffalo-Pittsburgh line, and New York, Pennsylvania, New Jersey, and Connecticut, on and east of Buffalo-Pittsburgh line, 517.

Detroit, Mich. Demurrage, 69.

Epley, Miss., to Potomac Yard, Va., thence diverted to Hanover, Pa., 259.

Maylene, Ala., to Chattanooga, Tenn., 237.

New Orleans, La. Demurrage, 33.

Nick's Creek, Tenn., to Cincinnati, Ohio, 87.



**LUMBER—Continued.**

Owensboro, Ky., to New York and Brooklyn, N. Y., and Philadelphia, Pa., 508.

Platanus, Mo., to Cairo, Ill., 471.

Prentiss, Miss., to Waterbury, Conn., 229.

Sioux City, Iowa, from Missouri, Oklahoma, Arkansas, Texas, Louisiana, Tennessee, Mississippi, and Alabama, 347.

Suqualena, Miss., to Meridian, Miss., concentrated and reshipped to points in Kentucky, Tennessee, Illinois, and Michigan, 20.

**LUMBER, FIR.** Eagle Gorge, Wash., to Gordon, Nebr., 57.

**LUMBER, PINE.** Pittsburgh, Pa., and Buffalo, N. Y., from Norfolk, Suffolk, Petersburg, Richmond, Lynchburg, and Roanoke, Va., 460.

**LUMBER, YELLOW PINE.** Sioux City and Morningside, Iowa, from points in southern yellow pine blanket, 540.

**MARBLE.** Official classification territory. Ratings, 91 (97).

**MEATS, CANNED.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**MEATS, CURED.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**MEATS, DRY SALTED.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**MEATS, FRESH.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**MEATS, PICKLED.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**MEATS, SMOKED.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**MOLASSES, BLACKSTRAP:**

Key West, Fla., to Memphis, Tenn., 251.

New Orleans, La., to Owensboro, Ky., 222.

**MULES:**

Birmingham, Ala., from Kentucky and Tennessee, 524.

Montgomery, Ala., from St. Louis, Mo., East St. Louis, Ill., Evansville, Ind., Kentucky, Tennessee, and Ohio River crossings, 524.

**OIL, COCONUT.** San Francisco, Cal., to Ivorydale, Ohio, 231.

**OIL, PETROLEUM.** Oklahoma from southeastern Kansas, 355.

**OILS, COOKING.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**PACKING-HOUSE PRODUCTS.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**PAPER.** Hamilton, Ohio, to Atlanta, Ga., 227.

**PAPER, BUILDING.** Chicago and Chicago Heights, Ill., to Tulsa and Muskogee, Okla., 212.

**PAPER, FRUIT WRAPPING.** Jacksonville, Fla., to Sanford, Fla., originating at Camas, Wash., and Floriston, Cal., 44.

**PAPER, NEWS PRINT.** International Falls, Minn., to Little Rock, Ark., 208.

**PAPER, ROOFING.** Chicago and Chicago Heights, Ill., to Tulsa and Muskogee, Okla., 212.

**PEANUTS.** Houston, Tex., to St. Louis, Mo., Chicago, Ill., Milwaukee, Wis., Red Wing and St. Paul, Minn., Cleveland and Toledo, Ohio, and Buffalo, N. Y., 542.

**PETROLEUM.** Kansas to Oklahoma, 355.

**PETROLEUM PRODUCTS.** Kansas to Oklahoma, 355.

**PIGS' FEET.** California terminals from South Omaha, Nebr., Kansas City, Kans., and South St. Joseph, Mo., 49.

**PIPE, BLOWER.** Chicago, Ill., to Laurel, Miss., 507.

**PIPE, CASE-IRON:**

Missouri River cities and points in Kansas from Chicago, Ill., and Mississippi River, 109 (120).

Western trunk line territory from Birmingham, Ala., and other southeastern points, 109.

**PIPE FITTINGS.** *See* Fittings.

**PIPE, IRON.** New York, N. Y., to Eagle Pass, Tex., destined to Agujita, Sabinas, and Lampacitos, Mex., 219.

**PIPE, WROUGHT IRON.** Missouri River cities and points in Kansas from Chicago, Ill., and Mississippi River, 109 (120).

**PITCH, COAL TAR.** Utah common points to Colorado common points, 27.

**PULP, WET WOOD.** Detroit, Mich., to Syracuse, N. Y., 14.

**RAILS.** Mississippi River to Kansas City, Mo., and points in Kansas, 109 (127).

**RAILWAY MATERIAL.** Mississippi River to Kansas City, Mo., and points in Kansas, 109 (127).

**RANGES.** Chicago, Ill., to St. Paul and Duluth, Minn., 109 (111-112).

**RICE, CLEAN.** Arkansas to New England freight association, trunk line, C. F. A., and western trunk line territories, and Oklahoma, 566.

**RICE PRODUCTS.** Arkansas to New England freight association, trunk line, C. F. A., and western trunk line territories, and Oklahoma, 566.

**RODS, CURTAIN.** Ogdensburg, N. Y., to Tacoma, Wash., 277.

**ROLLER BEARINGS.** *See* Bearings.

**ROOFING, PREPARED.** Chicago and Chicago Heights, Ill., to Tulsa and Muskogee, Okla., 212.

**SALT:**

Duluth, Minn., to Calgary, Canada, 249.

Lafayette, La., to Rittman, Ohio, and grouped points, 246.

**SASH.** Wausau, Wis., to Girardville, Pa., 12.

**SAUSAGE, CURED.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**SCRAP, FUR.** Norfolk, Va., from Connecticut and Massachusetts, 467.

**SEED, TIMOTHY.** Mott, N. Dak., to Minneapolis, Minn., 32.

**SHELLS, MUSSEL.** Cochrane, Ala., to Muscatine, Iowa, 42.

**SHOOK, BOX.** Oregon to California, 372.

**SPRINGS, COILED.** New York, N. Y., to Leipsic, Ohio, 76.

**STEEL ARTICLES:**

C. F. A. territory to Minneapolis, St. Paul, and Duluth, Minn., 109.

Iowa from Chicago and Peoria, Ill., St. Louis and Kansas City, Mo., St. Paul, Minneapolis, and Duluth, Minn., Mississippi River, and points east of Indiana-Illinois state line, 109 (118).

Western trunk line territory from Chicago and Peoria, Ill., St. Louis and Kansas City, Mo., Minneapolis, St. Paul, and Duluth, Minn., and Mississippi River crossing, 109.

**STONE, NATURAL.** Official classification territory. Ratings, 91 (95).

**STONE, ROUGH.** Bedford, Ind., district to Omaha, Nebr., 254.

**STOVES.** Chicago, Ill., to St. Paul and Duluth, Minn., 109 (111-112).

**SULPHUR.** Bryan Mound, Tex., to Connable, Ala., 221.

**SWEEPINGS, COTTON FACTORY.** Philadelphia, Pa., to Hopewell, Va., 224.

**TALC.** New York, N. Y., to Concord, N. C., 472.

**TANK, TAR-HEATING.** Frankfort, N. Y., to Portland, Oreg., 474.

**TAR, COAL.** Utah common points to Colorado common points, 27.

**TAR-HEATING TANK.** *See* Tank.

**TILE, GYPSUM HOLLOW BUILDING.** Grand Rapids, Mich., to points on and east of Mississippi River and on and north of the Ohio River, 1.

**TONGUE, PICKLED.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**TRANSPLANTERS.** Racine, Wis., to Portland, Oreg., 71.

**TRIPE, PICKLED.** California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., 49.

**TUBES, BOILER.** New York, N. Y., to Eagle Pass, Tex., destined to Agujita, Sabinas, and Lampacitos, Mex., 219.

**WHEAT:**

Arkansas City, Kans. Switching charges on shipments from Sterling, Kans., milled and reshipped to Hartford City, Ind., 67.

Great Falls, Mont. Milling in transit, 263.

**WOOD-PULP BOARD.** *See* Board.

47 I. C. C.

## TABLE OF LOCALITIES.

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[The number in parentheses following citation indicates where locality is considered.]

Abilene, Kans., from Scammon, Kans. Nut coal, 52.

Accomac county, Va., to Philadelphia, Pa., and Wilmington, Del. Lumber, 54.

Agujita, Mexico, from Eagle Pass, Tex., originating at New York, N. Y. Iron pipe, pipe fittings, and boiler tubes, 219.

Alabama to Atlanta, Ga. Low grade cedar logs, 39.

Alabama to Sioux City, Iowa. Lumber and other forest products, 347.

Alabama from Stonega, Osaka, Glamorgan, Esserville, and Dorchester, Va. Coke; through routes and joint rates, 282.

Alliance, Nebr., from Colorado. Bituminous coal, 557.

Angora, Nebr., from Colorado. Bituminous coal, 557.

Anselmo, Nebr., from Colorado. Bituminous coal, 557.

Ansley, Nebr., from Colorado. Bituminous coal, 557.

Appleton, Minn., to Thief River Falls and Crookston, Minn. Bulk corn, 581.

Archer, Iowa, to Minneapolis, Minn., reshipped to California. Corn, 59.

Ardmore, Okla., from Arkansas. Rice and rice products, 566 (575).

Arkansas to Muskogee, Okla. Apples, 239.

Arkansas to New England freight association, trunk line, C. F. A., and western trunk line territories, and Oklahoma. Rice and rice products, 566.

Arkansas to Sioux City, Iowa. Lumber and other forest products, 347.

Arkansas to Sioux City and Morningside, Iowa. Yellow pine lumber, 540.

Arkansas City, Kans. Switching charges on wheat from Sterling, Kans., milled and reshipped to Hartford City, Ind., 67.

Arkansas City, Kans., to Oklahoma. Petroleum and products, 355.

Ashland, Ky., to and from C. F. A. territory. Class and commodity rates; fourth section, 576.

Astoria, Oreg., from San Francisco, Cal. Canned goods, 285.

Atlanta, Ga., from Alabama, Tennessee, and Georgia. Low grade cedar logs, 39.

Atlanta, Ga., from Hamilton, Ohio. Paper, 227.

Atlanta, Ga., from Speedway, Ind. Acetylene gas cylinders, 22.

Atlantic ports. Free time, 162.

Baker mine switch, Tenn. Placement of cars for loading, 73.

Baltimore, Md., to Charleston, S. C. Boat line, 365.

Baltimore, Md., to North Wilkesboro, Elkin, Ronda, and Roaring River, N. C. Empty tin cans, 85.

Baltimore, Md., to Philadelphia, Pa., Camden, N. J., Hickman and Seaford, Del., Hancock, W. Va., Melfa, Va., and Bethlehem, Md. Empty tin cans, 82.

Baraboo, Wis. Hogs; transit rules and regulations, 380 (381).

Bartlesville, Okla., from Kansas. Petroleum and products, 355.

Battle Creek, Mich., to and from eastern territory. Class rates, 409 (412).

Beaver Falls, N. Y., to various destinations. Class and commodity rates, 79.

Bedford, Ind., district to Omaha, Nebr. Rough stone, 254.

- Belle Plaine, Iowa. Hogs; transit rules and regulations, 380 (381).  
 Berwyn, Nebr., from Colorado. Bituminous coal, 557.  
 Bethlehem, Md., from Baltimore, Md. Empty tin cans, 82.  
 Bigelow, Minn., to Sioux City, Iowa. Live stock; caretakers, 279.  
 Birmingham, Ala., from St. Louis, Mo., East St. Louis, Ill., Kentucky, Tennessee, and Ohio River crossings. Live stock, 524.  
 Birmingham, Ala., to western trunk line territory. Cast-iron pipe, 109.  
 Booge, S. Dak., to Sioux City, Iowa. Live stock; caretakers, 279.  
 Boone, Iowa. Hogs; transit rules and regulations, 380 (381).  
 Boston, Mass. Free time, 162.  
 Broken Bow, Nebr., from Colorado. Bituminous coal, 557.  
 Brooklyn, N. Y. Lighterage and storage, 643.  
 Brooklyn, N. Y., from Owensboro, Ky. Lumber, 508.  
 Brown Spur, Kans., from Krebs, Okla. Nut coal, 25.  
 Bryan, Ohio, from Michigan. Grain, 104.  
 Bryan Mound, Tex., to Connable, Ala. Sulphur, 221.  
 Bucyrus, Ohio, from Connellsville, Pa., and Fairmont, W. Va., districts. Coke, 136.  
 Buffalo, N. Y., from Houston, Tex. Peanuts, 542.  
 Buffalo, N. Y., from Norfolk, Suffolk, Petersburg, Richmond, Lynchburg, and Roanoke, Va. Lumber, 460.  
 Buffalo-Pittsburgh line, points west of, in New York, Pennsylvania, Ohio, and Michigan, and points on and east of, in New York, Pennsylvania, New Jersey, and Connecticut, from Chester, Va. Lumber, 517.  
 Buffalo-Pittsburgh territory to Tuscaloosa, Ala. Class and commodity rates, 483.  
 Burbank, S. Dak., to various destinations. Grain; car distribution, 475.  
 Cadillac, Mich., to and from eastern territory. Class rates, 409 (413).  
 Cairo, Ill., from Carryville, Ark. Lumber, 225.  
 Cairo, Ill., from Platanus, Mo. Lumber, 471.  
 Calgary, Canada, from Duluth, Minn. Salt, 249.  
 California from Minneapolis, Minn., originating at points in Iowa. Corn, 59.  
 California from Oregon. Box shook and box materials, 372.  
 California terminals from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans. Packing-house products, 49.  
 Camas, Wash., to Jacksonville, Fla., destined to Sanford, Fla. Fruit wrapping paper, 44.  
 Camden, N. J., from Baltimore, Md. Empty tin cans, 82.  
 Canada to points in the United States, via Newport, Vt. Brokerage fees, 200.  
 Caney, Kans., to Oklahoma. Petroleum and products, 355.  
 Canton, S. Dak., to various destinations. Grain; car distribution, 475.  
 Cape Girardeau, Mo., to Illinois. Cement, 204.  
 Carlisle, Ark., to New England freight association, trunk line, C. F. A., and western trunk line territories, and Oklahoma. Rice and rice products, 566.  
 Carryville, Ark., to Cairo, Ill. Lumber, 225.  
 Cass Lake, Minn., to Detroit, Mich. Lumber, 69.  
 Castleville, Ark., to Muskogee, Okla. Apples, 239.  
 C. F. A. territory from Arkansas. Rice and rice products, 566.  
 C. F. A. territory to and from Ashland, Louisville, and other Kentucky points. Class and commodity rates; fourth section, 576.  
 C. F. A. territory from Grand Rapids, Mich. Gypsum hollow building tile, 1.  
 C. F. A. territory to Minneapolis, St. Paul, and Duluth, Minn. Iron and steel articles, 109.  
 Chanute, Kans., to Jefferson City, Mo. Brick, 217.  
 Chanute, Kans., to Oklahoma. Petroleum and products, 355.

- Charleston, S. C., from Baltimore, Md., and Norfolk, Va. Boat line, 365.
- Chattanooga, Tenn., from Maylene, Ala. Lumber, 237.
- Chester, Va., to New York, Pennsylvania, Ohio, and Michigan, west of Buffalo-Pittsburgh line, and New York, Pennsylvania, New Jersey, and Connecticut, on and east of Buffalo-Pittsburgh line. Lumber, 517.
- Chicago, Ill. Hogs; transit rules and regulations, 380.
- Chicago, Ill., from Beaver Falls, N. Y. Class and commodity rates, 79.
- Chicago, Ill., from Houston, Tex. Peanuts, 542.
- Chicago, Ill., to Iowa and Kansas. Iron and steel articles, 109 (118, 120).
- Chicago, Ill., to Laurel, Miss. Blower pipe, 507.
- Chicago, Ill., to St. Paul and Duluth, Minn. Stoves, ranges, and stove fixtures, 109 (111-112).
- Chicago, Ill., to Tulsa and Muskogee, Okla. Roofing and building paper, 212.
- Chicago, Ill., to western trunk line territory. Iron and steel articles, 109.
- Chicago Heights, Ill., to Tulsa and Muskogee, Okla. Roofing and building paper, 212.
- Cincinnati, Ohio, to Atlanta, Ga. Acetylene gas cylinders, 22.
- Cincinnati, Ohio, from Baker mine switch, Tenn. Tan bark; refusal to place cars for loading, 73.
- Cincinnati, Ohio, from Nick's Creek, Tenn. Lumber, 87.
- Cincinnati, Ohio, to Norfolk, Va. Proportional rates, 365.
- Clay Center, Kans., to Kansas City, Mo. Cattle, 261.
- Cleveland, Ohio, from Houston, Tex. Peanuts, 542.
- Cleveland-Detroit territory to Tuscaloosa, Ala., through Mobile, Ala. Joint through rates, 483.
- Clinton, Iowa. Hogs; transit rules and regulations, 380 (381).
- Clinton, Okla., from Kansas. Petroleum and products, 355.
- Cochrane, Ala., to Muscatine, Iowa. Mussel shells, 42.
- Coffeyville, Kans., to Gentry, Ark. Egg-case fillers, 84.
- Coffeyville, Kans., to Oklahoma. Petroleum and products, 355.
- Colorado to Sweetwater, Hazard, Litchfield, Mason, Ansley, Berwyn, Broken Bow, Merna, Angora, Anselmo, Alliance, Seneca, and Hyannis, Nebr. Bituminous coal, 557.
- Colorado common points from Utah common points. Coal tar and coal tar pitch, 27.
- Concord, N. C., from New York, N. Y. Talc, 472.
- Connable, Ala., from Bryan Mound, Tex. Sulphur, 221.
- Connecticut from Chester, Va. Lumber, 517.
- Connecticut to Norfolk, Va. Fertilizer materials, 467.
- Connellsville district, Pa., to Galion, Marion, Bucyrus, and Crestline, Ohio. Coke, 136.
- Cottonwood, Minn., to Kansas City, Mo., reconsigned at Sioux City, Iowa. Corn, 74.
- Council Bluffs, Iowa, from South Dakota. Grain; cars off line, 532.
- Crestline, Ohio, from Connellsville, Pa., and Fairmont, W. Va., districts. Coke, 136.
- Crookston, Minn., from Danvers, Appleton, and De Graff, Minn. Bulk corn, 581.
- Cushing, Okla., from Kansas. Petroleum and products, 355.
- Danvers, Minn., to Thief River Falls and Crookston, Minn. Bulk corn, 581.
- Davidson, Okla., to Texas City, Tex., and New Orleans, La., compressed and concentrated at Lawton, Okla. Cotton, 8.
- De Graff, Minn., to Thief River Falls and Crookston, Minn. Bulk corn, 581.
- DeWitt, Ark., to New England freight association, trunk line, C. F. A., and western trunk line territories, and Oklahoma. Rice and rice products, 566.
- Dell Rapids, S. Dak., to various destinations. Grain; car distribution, 475.
- Denver, Colo. Hogs; transit rules and regulations, 380.
- Detroit, Mich. Demurrage on lumber, 69.



- Detroit, Mich., to Syracuse, N. Y. Wet wood pulp, 14.  
 Dorchester, Va., to Alabama, Florida, Georgia, Kentucky, Louisiana, South Carolina, and Tennessee. Coke; through routes and joint rates, 282.  
 Drumright, Okla., from Kansas. Petroleum and products, 355.  
 Duluth, Minn. Switching charges, 583.  
 Duluth, Minn., to Calgary, Canada. Salt, 249.  
 Duluth, Minn., from C. F. A. territory. Iron and steel articles, 109.  
 Duluth, Minn., from Chicago, Ill. Stoves, ranges, and stove fixtures, 109 (111-112).  
 Duluth, Minn., to western trunk line territory. Iron and steel articles, 109.  
 Eagle Gorge, Wash., to Gordon, Nebr. Fir lumber, 57.  
 Eagle Pass, Tex., from New York, N. Y., destined to Agujita, Sabinas, and Lampacitos, Mexico. Iron pipe, pipe fittings, and boiler tubes, 219.  
 East Chicago, Ind., from Elsdon, Ill. Scrap iron, 215.  
 East St. Louis, Ill. Hogs; transit rules and regulations, 380.  
 East St. Louis, Ill., to Birmingham and Montgomery, Ala. Live stock, 524.  
 East St. Louis, Ill., from Missouri. Live stock, 287.  
 Eastern cities to Tuscaloosa, Ala. Class and commodity rates, 483.  
 Eastern port cities to Tuscaloosa, Ala., through Mobile, Ala. Through routes and joint rates, 483.  
 Eastern shore of Virginia to Philadelphia, Pa., and Wilmington, Del. Lumber, 54.  
 Eastern territory to and from Michigan. Class and commodity rates, 409.  
 El Paso, Tex., from St. Louis, Mo., and Milwaukee, Wis. Beer, 64.  
 Elkhart, Ind., milled in transit and reshipped to Toledo and Bryan, Ohio, and points south and east thereof. Grain, 104.  
 Elkin, N. C., from Baltimore, Md. Empty tin cans, 85.  
 Elsdon, Ill., to East Chicago, Ind. Scrap iron, 215.  
 Enid, Okla., from Kansas. Petroleum and products, 355.  
 Epley, Miss., to Potomac Yards, Va., diverted to Hanover, Pa. Lumber, 259.  
 Erie, Kans., to Oklahoma. Petroleum and products, 355.  
 Esserville, Va., to Alabama, Florida, Georgia, Kentucky, Louisiana, South Carolina, and Tennessee. Coke; through routes and joint rates, 282.  
 Evansville, Ind., to Montgomery, Ala. Live stock, 524.  
 Fairmont, W. Va., to Portland, Oreg. Household goods, 210.  
 Fairmont district, W. Va., to Galion, Marion, Bucyrus, and Crestline, Ohio. Coke, 136.  
 Figart, Pa. Coal; Refusal to supply cars for transportation to New York, N. Y., 403.  
 Florida from Stonega, Osaka, Glamorgan, Esserville, and Dorchester, Va. Coke; through routes and joint rates, 282.  
 Floriston, Cal., to Jacksonville, Fla., destined to Sanford, Fla. Fruit wrapping paper, 44.  
 Frankfort, N. Y., to Portland, Oreg. Tar-heating tank, 474.  
 Galion, Ohio, from Connellsville, Pa., and Fairmont, W. Va., districts. Coke, 136.  
 Galveston, Tex. Free time, 162 (183).  
 Garretson, S. Dak., to Sioux City, Iowa. Live stock; caretakers, 279.  
 Gaza, Iowa, to Minneapolis, Minn., reshipped to California. Corn, 59.  
 Gentry, Ark., from Coffeyville, Kans. Egg-case fillers, 84.  
 Georgia to Atlanta, Ga. Low-grade cedar logs, 39.  
 Georgia from Stonega, Osaka, Glamorgan, Esserville, and Dorchester, Va. Coke; through routes and joint rates, 282.  
 Girardville, Pa., from Wausau, Wis. Sash and doors, 12.  
 Glamorgan, Va., to Alabama, Florida, Georgia, Kentucky, Louisiana, South Carolina, and Tennessee. Coke; through routes and joint rates, 282.  
 Glenrock, Wyo., to South Dakota. Coal, 750.  
 Gordon, Nebr., from Eagle Gorge, Wash. Fir lumber, 57.

- Grand Rapids, Mich., to and from eastern territory. Class and commodity rates, 409 (412).
- Grand Rapids, Mich., to points on and east of the Mississippi River and on and north of the Ohio River. Gypsum hollow building tile, 1.
- Grants Pass, Oreg., to California. Box Shook and box material, 372 (375).
- Great Falls, Mont. Wheat; milling in transit, 263.
- Great Falls, Mont., to North Dakota, and St. Paul and Minneapolis, Minn., Seattle and Tacoma, Wash., and Portland, Oregon. Flour, 263.
- Green Valley, Minn., to Kansas City, Mo., reconsigned at Sioux City, Iowa. Corn, 74.
- Greenville, N. J., from Kenova, W. Va. Bridge builders' outfit, 235.
- Gulf ports. Free time, 162 (180).
- Gulf ports to Tuscaloosa, Ala. Class and commodity rates, 483.
- Gulfport, Miss. Free time, 162 (183).
- Hamilton, Ohio, to Atlanta, Ga. Paper, 227.
- Hancock, W. Va., from Baltimore, Md. Empty tin cans, 82.
- Hanover, Pa., from Epley, Miss., diverted at Potomac Yard, Va. Lumber, 259.
- Hartford City, Ind., from Sterling, Kans., milled and reshipped at Arkansas City, Kans. Wheat, 67.
- Hattiesburg, Miss., to New Orleans, La., for export. Lumber, 33.
- Haverhill, Mass., to Norfolk, Va. Fertilizer materials, 467.
- Hazard, Nebr., from Colorado. Bituminous coal, 557.
- Healing Springs, Ark., to Muskogee, Okla. Apples, 239.
- Hickman, Del., from Baltimore, Md. Empty tin cans, 82.
- Highfill, Ark., to Muskogee, Okla. Apples, 239.
- Hills, Minn., to Sioux City, Iowa. Live stock; caretakers, 279.
- Hinton, Iowa, to Minneapolis, Minn., reshipped to California. Corn, 59.
- Hoboken, N. J. Lighterage and storage, 643.
- Hopewell, Va., from Philadelphia, Pa. Cotton factory sweepings, 224.
- Houston, Tex., to St. Louis, Mo., Chicago, Ill., Milwaukee, Wis., Red Wing and St. Paul, Minn., Cleveland and Toledo, Ohio, and Buffalo, N. Y. Peanuts, 542.
- Howard, S. Dak., to various destinations. Grain; car distribution, 475.
- Hudson, Wyo., to South Dakota. Coal, 750.
- Hyannis, Nebr., from Colorado. Bituminous coal, 557.
- Illinois from Cape Girardeau, Mo. Cement, 204.
- Illinois from Meridian, Miss., originating at Suqualena, Miss. Lumber, 20.
- Independence, Kans., to Oklahoma. Petroleum and products, 355.
- Indiana-Illinois state line, points east of, to Iowa and other points in western trunk line territory. Iron and steel articles, 109 (118, 119).
- Interior eastern points to Tuscaloosa, Ala. Class and commodity rates, 483.
- International Falls, Minn., to Little Rock, Ark. News print paper, 208.
- Iowa. Coal; tolerance, 549.
- Iowa from Chicago and Peoria, Ill., St. Louis and Kansas City, Mo., St. Paul, Minneapolis, and Duluth, Minn., Mississippi River, and points east of Indiana-Illinois state line. Iron and steel articles, 109 (118).
- Iowa to Minneapolis, Minn., reshipped to California. Corn, 59.
- Ivorydale, Ohio, from San Francisco, Cal. Coconut oil, 231.
- Jackson, Mich., to and from eastern territory. Class and commodity rates, 409 (412).
- Jacksonville, Fla., to Sanford, Fla., originating at Camas, Wash., and Floriston, Cal. Fruit wrapping paper, 44.
- Jefferson, S. Dak., to various destinations. Grain; car distribution, 475.
- Jefferson City, Mo., from Chanute, Kans. Brick, 217.
- Jersey City, N. J. Lighterage and storage, 643.
- Kalamazoo, Mich., to and from eastern territory. Class rates, 409 (412).

- Kansas. Coal; tolerance, 549.
- Kansas from Chicago, Ill., and Mississippi River. Pipe and other iron and steel articles, 109 (120, 123).
- Kansas to Oklahoma. Petroleum oil, 355.
- Kansas City, Kans., to California terminals. Packing-house products, 49.
- Kansas City, Mo. Hogs; transit rules and regulations, 380.
- Kansas City, Mo., from Clay Center, Kans. Cattle, 261.
- Kansas City, Mo., from Green Valley and Cottonwood, Minn., reconsigned at Sioux City, Iowa. Corn, 74.
- Kansas City, Mo., to western trunk line territory. Iron and steel articles, 109.
- Kenova, W. Va., to Greenville, N. J. Bridge builders' outfit, 235.
- Kentucky to Birmingham and Montgomery, Ala. Live stock, 524.
- Kentucky to and from C. F. A. territory. Class and commodity rates; fourth section, 576.
- Kentucky from Meridian, Miss., originating at Suqualena, Miss. Lumber, 20.
- Kentucky from Stonega, Osaka, Glamorgan, Esserville, and Dorchester, Va. Coke; through routes and joint rates, 282.
- Key West, Fla., to Memphis, Tenn. Blackstrap molasses, 251.
- Kirby, Wyo., to South Dakota. Coal, 750.
- Krebs, Okla., to Brown Spur, Kans. Nut coal, 25.
- La Crosse, Wis., to Lemmon, S. Dak. Beer, 233.
- Lafayette, La., from Rittman, Ohio. Salt, 246.
- Lampacitos, Mexico, from Eagle Pass, Tex., originating at New York, N. Y. Iron pipe, pipe fittings, and boiler tubes, 219.
- Lansing, Mich., to and from eastern territory. Class and commodity rates, 409 (412).
- Laurel, Miss., from Chicago, Ill. Blower pipe, 507.
- Lawton, Okla. Compression and concentration of cotton from Davidson and Snyder, Okla., destined to Texas City, Tex., and New Orleans, La., 8.
- Leipsic, Ohio, from New York, N. Y. Coiled springs, 76.
- Lemmon, S. Dak., from La Crosse, Wis. Beer, 233.
- Litchfield, Nebr., from Colorado. Bituminous coal, 557.
- Little Rock, Ark., from International Falls, Minn. News print paper, 208.
- Lonoke, Ark., to New England freight association, trunk line, C. F. A., and western trunk line territories, and Oklahoma. Rice and rice products, 566.
- Louisiana to Sioux City, Iowa. Lumber and other forest products, 347.
- Louisiana from Stonega, Osaka, Glamorgan, Esserville, and Dorchester, Va. Coke; through routes and joint rates, 282.
- Louisville, Ky., to and from C. F. A. territory. Class and commodity rates; fourth section, 576.
- Louisville, Ky., to Norfolk, Va. Proportional rates, 365.
- Lower peninsula of Michigan to and from eastern territory. Class and commodity rates, 409.
- Lynchburg, Va., to Pittsburgh, Pa., and Buffalo, N. Y. Pine lumber, 460.
- Lynn, Mass., to Norfolk, Va. Fertilizer materials, 467.
- McAlester, Okla., from Arkansas. Rice and rice products, 566 (575).
- Manhattan, N. Y. Lighterage and storage, 643.
- Mankato, Minn. Hogs; transit rules and regulations, 380 (381).
- Mankato, Minn., to Sioux City, Iowa. Live stock; caretakers, 279.
- Maplesville, Ala., to Chattanooga, Tenn. Lumber; fourth section, 237.
- Marcus, Iowa, to Minneapolis, Minn., reshipped to California. Corn, 59.
- Marion, Ohio, from Connellsville, Pa., and Fairmont, W. Va., districts. Coke, 136.
- Marlboro, Mass., to Norfolk, Va. Fertilizer materials, 467.
- Marshall, Mich., to and from eastern territory. Class rates, 409 (412).

- Mason, Nebr., from Colorado. Bituminous coal, 557.  
 Mason City, Iowa. Hogs; transit rules and regulations, 380 (381).  
 Massachusetts to Norfolk, Va. Fertilizer materials, 467.  
 Maylene, Ala., to Chattanooga, Tenn. Lumber, 237.  
 Melfa, Va., from Baltimore, Md. Empty tin cans, 82.  
 Memphis, Tenn., from Key West, Fla. Blackstrap molasses, 251.  
 Memphis, Tenn., to Tuscaloosa, Ala. Class and commodity rates, 483.  
 Meridian, Miss., from Suqualena, Miss., concentrated and reshipped to Kentucky, Tennessee, Illinois, and Michigan. Lumber, 20.  
 Merna, Nebr., from Colorado. Bituminous coal, 557.  
 Merrill, Iowa, to Minneapolis, Minn., reshipped to California. Corn, 59.  
 Michigan. Grain, milled in transit and reshipped to Toledo and Bryan, Ohio, and points south and east thereof, 104.  
 Michigan from Chester, Va. Lumber, 517.  
 Michigan to and from eastern territory. Class and commodity rates, 409.  
 Michigan from Meridian, Miss., originating at Suqualena, Miss. Lumber, 20.  
 Milwaukee, Wis. Hogs; transit rules and regulations, 380.  
 Milwaukee, Wis. Switching charges on bituminous coal, 41.  
 Milwaukee, Wis., to El Paso, Tex. Beer, 64.  
 Milwaukee, Wis., from Houston, Tex. Peanuts, 542.  
 Minneapolis, Minn. Switching charges on grain, 583.  
 Minneapolis, Minn., from C. F. A. territory. Iron and steel articles, 109.  
 Minneapolis, Minn., from Great Falls, Mont. Flour, 263.  
 Minneapolis, Minn., from Iowa, reshipped to California. Corn, 59.  
 Minneapolis, Minn., from Mott, N. Dak. Flaxseed and timothy seed, 32.  
 Minneapolis, Minn., to western trunk line territory. Iron and steel articles, 109.  
 Minnesota. Coal; tolerance, 549.  
 Minnesota to Sioux City, Iowa. Live stock; caretakers, 279.  
 Mississippi to Sioux City, Iowa. Lumber and other forest products, 347.  
 Mississippi River, points on and east of, from Grand Rapids, Mich. Gypsum hollow building tile, 1.  
 Mississippi River crossings to Tuscaloosa, Ala. Class and commodity rates, 483.  
 Mississippi River crossings to western trunk line territory. Iron and steel articles, 109.  
 Missouri. Coal; tolerance, 549.  
 Missouri to East St. Louis and National Stock Yards, Ill. Live stock, 287.  
 Missouri to Sioux City, Iowa. Lumber and other forest products, 347.  
 Missouri River cities from Chicago, Ill., and Mississippi River. Pipe and other iron and steel articles, 109 (120).  
 Missouri Valley, Iowa. Hogs; transit rules and regulations, 380 (381).  
 Mobile, Ala. Free time, 162 (182).  
 Mobile, Ala., to Tuscaloosa, Ala., originating in Cleveland-Detroit territory, eastern port cities, interior eastern points, Norfolk, Va., and south Atlantic coast points. Through routes and joint rates, 483.  
 Moline, Ill., to Tulsa and Muskogee, Okla. Prepared roofing and building paper, 212.  
 Montana to Great Falls, Mont., milled and shipped to North Dakota, and St. Paul and Minneapolis, Minn., Seattle and Tacoma, Wash., and Portland, Oreg. Wheat, 263.  
 Montgomery, Ala., from St. Louis, Mo., East St. Louis, Ill., Kentucky, Tennessee, and Ohio River crossings. Live stock, 524.  
 Morningside, Iowa, from Arkansas. Yellow pine lumber, 540.  
 Mott, N. Dak., to Minneapolis, Minn. Flaxseed and timothy seed, 32.  
 Muscatine, Iowa, from Cochrane, Ala. Mussel shells, 42.  
 47 I. C. C.

- Muskogee, Okla., from Arkansas. Apples, 239.
- Muskogee, Okla., from Arkansas. Rice and rice products, 566 (575).
- Muskogee, Okla., from Chicago and Chicago Heights, Ill. Prepared roofing and building paper, 212.
- National Stock Yards, Ill., from Missouri. Live stock, 287.
- Nebraska. Coal; tolerance, 549.
- Nebraska from various points. Cement, 160.
- New England. Diversion and reconsignment, 590.
- New England freight association territory from Arkansas. Rice and rice products, 566.
- New Jersey from Chester, Va. Lumber, 517.
- New Orleans, La. Demurrage on lumber, 33.
- New Orleans, La. Free time, 162 (182).
- New Orleans, La., from Davidson and Snyder, Okla., compressed and concentrated at Lawton, Okla. Cotton, 8.
- New Orleans, La., to Owensboro, Ky. Blackstrap molasses, 222.
- New York from Chester, Va. Lumber, 517.
- New York, N. Y. Free time, 162.
- New York, N. Y. Handling charges on heavy articles, 323.
- New York, N. Y. Lighterage and storage, 643.
- New York, N. Y., to Concord, N. C. Talc, 472.
- New York, N. Y., to Eagle Pass, Tex., destined to Agujita, Sabinas, and Lampacitos, Mexico. Iron pipe, pipe fittings, and boiler tubes, 219.
- New York, N. Y., from Figart, Pa. Coal, 403.
- New York, N. Y., to Leipsic, Ohio. Coiled springs, 76.
- New York, N. Y., from Owensboro, Ky. Lumber, 508.
- New York Harbor. Lighterage and storage, 643.
- New York Harbor. Storage and free time, 141.
- Newark, N. J. Lighterage and storage, 643.
- Newport, Vt. Brokerage fees on shipments from Canada destined to points in the United States, 200.
- Newport News, Va. Free time, 162.
- Nicks Creek, Tenn., to Cincinnati, Ohio. Lumber, 87.
- Norfolk, Va. Free time, 162.
- Norfolk, Va., to Charleston, S. C. Boat line, 365.
- Norfolk, Va., from Connecticut and Massachusetts. Fertilizer materials, 467.
- Norfolk, Va., from Ohio River crossings. Proportional rail rates, 365.
- Norfolk, Va., to Pittsburgh, Pa., and Buffalo, N. Y. Pine lumber, 460.
- Norfolk, Va., to Tuscaloosa, Ala., through Mobile, Ala. Through routes and joint rates, 483.
- North Atlantic ports. Free time, 162.
- North Dakota. Coal; tolerance, 549.
- North Dakota from Great Falls, Mont. Flour, 263.
- North Wilkesboro, N. C., from Baltimore, Md. Empty tin cans, 85.
- Northampton county, Va., to Philadelphia, Pa., and Wilmington, Del. Lumber, 54.
- Official classification territory. Coiled springs; classification, 76.
- Official classification territory. Horse blankets; classification, 62.
- Official classification territory. Incandescent lamp guards; classification, 36.
- Official classification territory. Live stock; classification, minimum weights, and standard or basic values, 335.
- Official classification territory. Tailors' woolen clippings, steel roller bearings, and natural stone; ratings, 91.
- Ogdensburg, N. Y., to Tacoma, Wash. Curtain rods, 277.

- Ohio from Chester, Va. Lumber, 517.
- Ohio from Connellsville, Pa., and Fairmont, W. Va., districts. Coke, 136.
- Ohio River, points on and north of, from Grand Rapids, Mich. Gypsum hollow building tile, 1.
- Ohio River crossings to Birmingham and Montgomery, Ala. Live stock, 524.
- Ohio River crossings to Norfolk, Va. Proportional rates, 365.
- Ohio River crossings to Tuscaloosa, Ala. Class and commodity rates, 483.
- Oklahoma from Arkansas. Rice and rice products, 566.
- Oklahoma from Kansas. Petroleum oil, 355.
- Oklahoma to Sioux City, Iowa. Lumber and other forest products, 347.
- Oklahoma to Texas City, Tex., and New Orleans, La., compressed and concentrated at Lawton, Okla. Cotton, 8.
- Oklahoma City, Okla., from Arkansas. Rice and rice products, 566 (575).
- Oklahoma City, Okla., from Kansas. Petroleum and products, 355.
- Omaha, Nebr. Hogs; transit rules and regulations, 380.
- Omaha, Nebr., from Bedford, Ind., district. Rough stone, 254.
- Omaha, Nebr., from South Dakota. Grain; cars off line, 532.
- Oregon to California. Box shook and box material, 372.
- Osaka, Va., to Alabama, Florida, Georgia, Kentucky, Louisiana, South Carolina, and Tennessee. Coke; through routes and joint rates, 282.
- Owensboro, Ky., from New Orleans, La. Blackstrap molasses, 222.
- Owensboro, Ky., to New York and Brooklyn, N. Y., and Philadelphia, Pa. Lumber, 508.
- Paterson, N. J. Lighterage and storage, 643.
- Peabody, Mass., to Norfolk, Va. Fertilizer materials, 467.
- Pennsylvania from Chester, Va. Lumber, 517.
- Pensacola, Fla. Free time, 162 (182).
- Peoria, Ill., to western trunk line territory. Iron and steel articles, 109.
- Peshtigo, Wis., from Taylor's Rapids, Wis. Saw logs, 6.
- Petersburg, Va., to Ohio, Pennsylvania, and Michigan, via Richmond, Va. Lumber; fourth section, 517 (521).
- Petersburg, Va., to Pittsburgh, Pa., and Buffalo, N. Y. Pine lumber, 460.
- Petoskey, Mich., to and from eastern territory. Class and commodity rates, 409 (413).
- Philadelphia, Pa. Free time, 162.
- Philadelphia, Pa., from Accomac and Northampton counties, Va. Lumber, 54.
- Philadelphia, Pa., from Baltimore, Md. Empty tin cans, 82.
- Philadelphia, Pa., to Hopewell, Va. Cotton factory sweepings, 224.
- Philadelphia, Pa., from Owensboro, Ky. Lumber, 508.
- Pittsburgh, Pa. Diversion or reconsignment of grain, etc., 590.
- Pittsburgh, Pa., from Norfolk, Suffolk, Petersburg, Richmond, Lynchburg, and Roanoke, Va. Lumber, 460.
- Platanus, Mo., to Cairo, Ill. Lumber, 471.
- Portland, Oreg., from Fairmont, W. Va. Household goods, 210.
- Portland, Oreg., from Frankfort, N. Y. Tar-heating tank, 474.
- Portland, Oreg., from Great Falls, Mont. Flour, 263.
- Portland, Oreg., from Racine, Wis. Transplanters, 71.
- Portland, Oreg., from San Francisco, Cal. Canned goods, 285.
- Portsmouth, Ohio, to Norfolk, Va. Proportional rates, 365.
- Potomac Yard, Va., from Epley, Miss., diverted to Hanover, Pa. Lumber, 259.
- Prentiss, Miss., to Waterbury, Conn. Lumber, 229.
- Primghar, Iowa, to Minneapolis, Minn., reshipped to California. Corn, 59.
- Quincy, Fla., from Windsor Locks, Conn. Second-hand cheesecloth, 243.
- Racine, Wis., to Portland, Oreg. Transplanters, 71.



- Red Wing, Minn., from Houston, Tex. Peanuts, 542.
- Remsen, Iowa, to Minneapolis, Minn., reshipped to California. Corn, 59.
- Richmond, Va., to Ohio, Pennsylvania, and Michigan, via Petersburg, Va. Lumber; fourth section, 517 (521).
- Richmond, Va., to Pittsburgh, Pa., and Buffalo, N. Y. Pine lumber, 460.
- Rittman, Ohio, to Lafayette, La. Salt, 246.
- Roanoke, Va., to Pittsburgh, Pa., and Buffalo, N. Y. Pine lumber, 460.
- Roaring River, N. C., from Baltimore, Md. Empty tin cans, 85.
- Rockwood, Tenn. Placement of cars for loading, 73.
- Ronda, N. C., from Baltimore, Md. Empty tin cans, 85.
- Sabinas, Mexico, from Eagle Pass, Tex., originating at New York, N. Y. Iron pipe, pipe fittings, and boiler tubes, 219.
- St. Joseph, Mo. Hogs; transit rules and regulations, 380.
- St. Louis, Mo. Hogs; transit rules and regulations, 380.
- St. Louis, Mo., to El Paso, Tex. Beer, 64.
- St. Louis, Mo., from Houston, Tex. Peanuts, 542.
- St. Louis, Mo., to Montgomery, Ala. Live stock, 524.
- St. Louis, Mo., from Sheboygan Falls, Wis. Harness leather, 16.
- St. Louis, Mo., to Tuscaloosa, Ala. Class and commodity rate, 483.
- St. Louis, Mo., to western trunk line territory. Iron and steel articles, 109.
- St. Paul, Minn. Hogs; transit rules and regulations, 380.
- St. Paul, Minn. Switching charges, 583.
- St. Paul, Minn., from C. F. A. territory. Iron and steel articles, 109.
- St. Paul, Minn., from Chicago, Ill. Stoves, ranges, and stove fixtures, 109 (111-112).
- St. Paul, Minn., from Great Falls, Mont. Flour, 263.
- St. Paul, Minn., from Houston, Tex. Peanuts, 542.
- St. Paul, Minn., to western trunk line territory. Iron and steel articles, 109.
- Salem, Mass., to Norfolk, Va. Fertilizer materials, 467.
- San Francisco, Cal., to Ivorydale, Ohio. Coconut oil, 231.
- San Francisco, Cal., to Portland and Astoria, Oreg. Canned goods, 285.
- Sanford, Fla., from Jacksonville, Fla., originating at Camas, Wash., and Floriston, Cal. Fruit wrapping paper, 44.
- Scammon, Kans., to Abilene, Kans. Nut coal, 52.
- Seaford, Del., from Baltimore, Md. Empty tin cans, 82.
- Seattle, Wash., from Great Falls, Mont. Flour, 263.
- Seneca, Nebr., from Colorado. Bituminous coal, 557.
- Sharon, Pa. Car spotting, 512.
- Sheboygan Falls, Wis., to St. Louis, Mo. Harness leather, 16.
- Sheridan, Wyo., to South Dakota. Coal, 750.
- Sherman, S. Dak., to Sioux City, Iowa. Live stock; caretakers, 279.
- Siloam Springs, Ark., to Muskogee, Okla. Apples, 239.
- Sioux City, Iowa. Hogs; transit rules and regulations, 380.
- Sioux City, Iowa, from Arkansas. Yellow-pine lumber, 540.
- Sioux City, Iowa, from Green Valley and Cottonwood, Minn., reconsigned to Kansas City, Mo. Corn, 74.
- Sioux City, Iowa, from Minnesota. Live stock; caretakers, 279.
- Sioux City, Iowa, from Missouri, Oklahoma, Arkansas, Texas, Louisiana, Tennessee, Mississippi, and Alabama. Lumber and other forest products, 347.
- Snyder, Okla., to Texas City, Tex., and New Orleans, La., compressed and concentrated at Lawton, Okla. Cotton, 8.
- South Atlantic coast points to Tuscaloosa, Ala., through Mobile, Ala. Through routes and joint rates, 483.
- South Atlantic ports to Tuscaloosa, Ala. Class and commodity rates, 483.

- South Carolina from Stonega, Osaka, Glamorgan, Esserville, and Dorchester, Va. Coke; through routes and joint rates, 282.
- South Dakota. Coal; tolerance, 549.
- South Dakota to Omaha, Nebr., and Council Bluffs, Iowa. Grain; cars off line, 532.
- South Dakota from Wyoming. Coal, 750.
- South Omaha, Nebr., to California terminals. Packing-house products, 49.
- South St. Joseph, Mo., to California terminals. Packing-house products, 49.
- Southeastern points to western trunk line territory. Cast-iron pipe, 109.
- Southern classification territory. Live stock; classification, minimum weights, and standard or basic values, 335.
- Speedway, Ind., to Atlanta, Ga. Acetylene-gas cylinders, 22.
- Sterling, Kans., to Arkansas City, Kans., milled and reshipped to Hartford City, Ind. Wheat, 67.
- Stonega, Va., to Alabama, Florida, Georgia, Kentucky, Louisiana, South Carolina, and Tennessee. Coke; through routes and joint rates, 282.
- Stuttgart, Ark., to New England freight association, trunk line, C. F. A., and western trunk line territories, and Oklahoma. Rice and rice products, 566.
- Suffolk, Va., to Pittsburgh, Pa., and Buffalo, N. Y. Pine lumber, 460.
- Summers, Ark., to Muskogee, Okla. Apples, 239.
- Sumrall, Miss., to New Orleans, La., for export. Lumber, 33.
- Superior, Wis. Switching charges, 583.
- Suqualena, Miss., to Meridian, Miss., concentrated and reshipped to Kentucky, Tennessee, Illinois, and Michigan. Lumber, 20.
- Sweetwater, Nebr., from Colorado. Bituminous coal, 557.
- Syracuse, N. Y., from Detroit, Mich. Wet wood pulp, 14.
- Tacoma, Wash., from Great Falls, Mont. Flour, 263.
- Tacoma Wash., from Ogdensburg, N. Y. Curtain rods, 277.
- Tama, Iowa. Hogs; transit rules and regulations, 380 (381).
- Taylor's Rapids, Wis., to Peshtigo, Wis. Saw logs, 6.
- Tennessee to Atlanta, Ga. Low-grade cedar logs, 39.
- Tennessee to Birmingham and Montgomery, Ala. Live stock, 524.
- Tennessee from Meridian, Miss., originating at Suqualena, Miss. Lumber, 20.
- Tennessee to Sioux City, Iowa. Lumber and other forest products, 347.
- Tennessee from Stonega, Osaka, Glamorgan, Esserville, and Dorchester, Va. Coke; through routes and joint rates, 282.
- Texas to Sioux City, Iowa. Lumber and other forest products, 347.
- Texas City, Tex., from Davidson and Snyder, Okla., compressed and concentrated at Lawton, Okla. Cotton, 8.
- Thief River Falls, Minn., from Danvers, Appleton, and De Graff, Minn. Bulk corn, 581.
- Toledo, Ohio, from Houston, Tex. Peanuts, 542.
- Toledo, Ohio, from Michigan. Grain, 104.
- Traverse City, Mich., to and from eastern territory. Class and commodity rates, 409 (413).
- Trinidad district, Colo., to Sweetwater and other Nebraska points. Bituminous coal, 557.
- Trunk line territory from Arkansas. Rice and rice products, 566.
- Tulsa, Okla., from Chicago and Chicago Heights, Ill. Prepared roofing and building paper, 212.
- Tulsa, Okla., from Kansas. Petroleum and products, 355.
- Tuscaloosa, Ala., from Ohio River crossings, St. Louis, Mo., Memphis, Tenn., and other lower Mississippi River crossings, from Gulf, south Atlantic, and Virginia ports, from eastern cities and interior eastern points, and from Buffalo-Pittsburgh territory. Class and commodity rates, 483.
- 47 I. C. C.

- Utah common points to Colorado common points. Coal tar and coal tar pitch, 27.
- Vermilion, S. Dak., to various destinations. Grain; car distribution, 475.
- Virginia to Philadelphia, Pa., and Wilmington, Del. Lumber, 54.
- Virginia cities to Pittsburgh, Pa., and Buffalo, N. Y. Pine lumber, 460.
- Virginia ports to Tuscaloosa, Ala. Class and commodity rates, 483.
- Walsenburg district, Colo., to Sweetwater and other Nebraska points. Bituminous coal, 557.
- Waterbury, Conn., from Prentiss, Miss. Lumber, 229.
- Waukegan, Ill., to western trunk line territory. Live stock and poultry feed, 10.
- Wausau, Wis., to Girardville, Pa. Sash and doors, 12.
- Western classification territory. Incandescent lamp guards; classification, 36.
- Western classification territory. Wood joint fasteners; classification, 18.
- Western trunk line territory from Arkansas. Rice and rice products, 566.
- Western trunk line territory from Birmingham, Ala., and other southeastern points. Cast-iron pipe, 109.
- Western trunk line territory from Chicago and Peoria, Ill., St. Louis and Kansas City, Mo., Minneapolis, St. Paul, and Duluth, Minn., and Mississippi River crossings. Iron and steel articles, 109.
- Western trunk line territory from Waukegan, Ill. Live stock and poultry feed, 10.
- Wheatley, Ark., to New England freight association, trunk line, C. F. A., and western trunk line territories, and Oklahoma. Rice and rice products, 566.
- Willmar, Minn., to Sioux City, Iowa. Live stock; caretakers, 279.
- Wilmington, Del., from Accomac and Northampton counties, Va. Lumber, 54.
- Windsor Locks, Conn., to Quincy, Fla. Secondhand cheesecloth, 243.
- Winona, Minn. Hogs; transit rules and regulations, 380 (381).
- Wyoming to South Dakota. Coal, 750.

## INDEX DIGEST.

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[The number in parentheses following citation indicates where paragraph occurs or subject is considered.]

### **ABSORPTION. *See also* SWITCHING.**

Charges resulting from failure of defendants to absorb switching charges at Meridian, Miss., on lumber from Suqualena, Miss., to Meridian for milling and re-shipment, found to have been unlawfully collected. Reparation awarded. *Gray Lumber Co. v. M. & O. R. R. Co.* 20.

Absorption of intermediate switching charges at Milwaukee, Wis., on bituminous coal destined beyond, found to have been without tariff authority. *Milwaukee Switching Absorption*, 41.

Provision in tariff of Santa Fe that switching charges on competitive traffic will be absorbed, not found applicable on shipment of wheat from Sterling, Kans., milled at Arkansas City, Ark., and reshipped to Hartford City, Ind., where the switching service was performed at transit point by the Frisco. *New Era Milling Co. v. A., T. & S. F. Ry. Co.* 67.

The effect of a switching absorption is to establish a joint rate, but this does not imply that by tariff provision a switching line may arbitrarily demand for its portion of the service any amount satisfactory to it. *Switching Absorptions*, 583 (586).

### **ACT TO REGULATE COMMERCE.**

Was primarily framed to prevent preferential treatments. *Unification of Railroad Operation*, 757.

Framed for times of peace and for protection of shippers and public against unjust or unfair treatment by the carrier, and not for protection of the nation and its commerce in time of war. *Id.* (757).

### **ADDITIONAL CHARGES.**

Carriers entitled to charges in addition to the line haul rate for reconsignment service. Cases cited sustaining this principle: *Reconsignment Case*, 590 (613).

### **ADJUSTMENT OF RATES.**

If some readjustment of rates is not made, the matter may be brought to the attention of the Commission in a supplemental proceeding and jurisdiction is retained for that purpose. *California Pine Box & Lumber Co. v. S. P. Co.* 372 (379).

History of the percentage adjustment in C. F. A. territory. *Michigan Percentage Cases*, 409 (422).

### **ADMINISTRATIVE RULINGS.**

Conference Ruling No. 59 cited. *Omaha Grain Exchange v. G. N. Ry. Co.* 532 (537).

Rule 66, Tariff Circular 18(a), cited. *White v. U. P. R. R. Co.* 261 (262).

### **ADVANCE IN RATES. *See also* SWITCHING.**

In general:

Proposed increased charges for delivering heavy articles by lighter at New York, N. Y., found justified. *Handling of Heavy Articles*, 323 (334).

**ADVANCE IN RATES—Continued.**

**Bearings:** Proposed increased ratings on roller bearings, other than car bolster, in Official Classification territory, found not justified and present ratings found unreasonable to the extent that they exceed third class l. c. l. and fourth class c. l. Official Classification No. 44, 91 (103).

**Beer:** Increased rates on beer from St. Louis, Mo., and Milwaukee, Wis., to El Paso, Tex., justified. Complaint dismissed. *Ramsey & Co. v. A., T. & S. F. Ry. Co.* 64.

**Canned goods:** Proposed increased rates on, from interior California points, applicable to transportation by water from San Francisco, Cal., to Portland and Astoria, Oreg., found justified. Canned Goods from San Francisco, Cal., 285 (286).

**Cement:** Proposed increased rates on cement from various producing points to points in Nebraska, found not justified. Cement to Nebraska (No. 2), 160.

**Clippings:** Proposed increased ratings on tailor's woolen clippings in Official Classification territory, found not justified. Official Classification No. 44, 91 (94).

**Iron and steel articles:** Proposed increase in all commodity rates on iron and steel articles applying within western trunk line territory and from points east of Chicago and the Mississippi River to points in western trunk line territory found not justified generally, but rates slightly higher than now maintained allowed. Western Trunk Lines Iron and Steel, 109 (128, 129).

**Leather, scrap:** Rates on, from points in Massachusetts and Connecticut to Norfolk, Va., via all-rail and rail-and-water routes, found justified. National Utilization Corporation *v. B. & A. R. R. Co.* 467 (470).

**Live stock:** Proposed increased rates on l. c. l. live stock, loose or crated, in official and southern classification territories, found not justified. Reasonable rating and minimum weight prescribed. Live Stock Classification, 335 (342).

**Live stock:** Present and proposed rates on live stock from Franklin, Ky., Gallatin and Nashville, Tenn., to Birmingham, Ala., found unreasonable. Reasonable rates prescribed. Reparation awarded. *Alabama Packing Co. v. L. & N. R. R. Co.* 524 (530-531).

**Lumber:** Rates in effect subsequent and prior to Jan. 1, 1915, on pine lumber to Pittsburgh and points taking same rates from Virginia cities and certain intermediate points and points immediately south thereof, found justified. North Carolina Pine Asso. *v. N. & W. Ry. Co.* 460 (466).

**Lumber:** Proposed increased rates on yellow pine lumber, c. l., from group 5 in the yellow pine blanket and group 8 in northeastern Arkansas to Sioux City and Morningside, Iowa, found not justified. Lumber to Sioux City, Iowa, 540 (541).

**Stone:** Proposed increased minimum weight and change in ratings on natural stone in official classification territory, justified. Official Classification No. 44, 91 (98, 99).

**AGENTS.**

The Commission has repeatedly held that the obligation rests upon carrier's agent to refrain from executing bills of lading which are contradictory and therefore impossible of execution. *American Bridge Co. v. N. & W. Ry. Co.* 235 (236).

It appears unwise to leave the matter of car distribution to the discretion of carriers' local agents as this practice leads to unjust discrimination. Just and reasonable rules should be devised for their guidance. *Farmers' Elevator Co. v. C., M. & St. P. Ry. Co.* 475 (482).

**AGGREGATE OF INTERMEDIATES.** See THROUGH AND LOCAL.

**ALLOWANCES.**

Matter of allowances or adjustment of freight charges between the parties lies outside the scope of the jurisdiction of the Commission. *Lafayette Chamber of Commerce v. A. & V. Ry. Co.* 246 (248).

Made to shippers or consignees for draying or ferrying certain commodities from Jersey City or Hoboken to points in Manhattan and Brooklyn, discussed. *New York Harbor Case*, 643 (697).

**ALTERNATIVE RATES.**

The tariff authorized the application of the class or commodity rates, whichever made the lower charges, and also the application of combination of intermediate rates if they made lower charges than the through rates. *Swift & Co. v. U. P. R. R. Co.* 49 (50).

**AMENDMENT OF COMPLAINT.**

At the hearing complainant abandoned its allegation of unreasonableness and substituted therefor, without objection by defendants, an allegation of undue prejudice. *Creamery Package Mfg. Co. v. K. C. S. Ry. Co.* 84.

**ANTI-TRUST LAWS.**

Operation of the anti-trust laws, except in respect of consolidations or mergers of parallel and competing lines, as applied to rail-and-water carriers subject to the act, and of the antipooling provisions of section 5 of the act, should be suspended during period of war, if unification is to be effected by the carriers. *Unification of Railroad Operation*, 757 (760).

**APPENDIX.**

No. 1. Statement showing total tons revenue freight carried, total tons carried 1 mile, and average haul for eastern and western groups, years ended June 30, 1914 and 1915. *Western Trunk Lines Iron and Steel*, 109 (130).

No. 2. Table showing present commodity rates on iron and steel articles from Chicago to points in Iowa, compared with fifth-class rates proposed. *Id.* (131).

No. 3. Table showing present proportional commodity rates on iron and steel articles from Mississippi River crossings, on traffic originating east of the Indiana-Illinois State line to points in Iowa, compared with fifth-class rates proposed. *Id.* (132).

No. 4. Statement of earnings on present and proposed rates, Kansas City to Iowa and Minnesota points, compared with earnings on rates from Chicago and St. Louis. *Id.* (133).

No. 5. Table showing present and proposed rates on iron and steel pipe and connections from Chicago to points in Iowa. *Id.* (134).

No. 6. Table showing present commodity rates from Mississippi River crossings on iron pipe and connections, on traffic originating east of the Indiana-Illinois state line, to points in Iowa, compared with proposed rates. *Id.* (135).

A. Mileage operated by railroads with terminals at New York Harbor. *New York Harbor Case*, 643 (740).

B. Number of principal steamship lines with sailings from various parts of the port of New York. *Id.* (741).

C. Commerce of New York as compared with Boston, New Orleans, Philadelphia, Baltimore, and Galveston. Annual average value of exports and imports stated by 10-year periods, 1861-1913. *Id.* (742).

D. Separate tonnage of the New York Central Railroad, Erie Railroad, and the Erie and Champlain Canals. *Id.* (743).

E. Map showing northern New Jersey considered as part of the port of New York. *Id.* (744).

F. Rate basis and waybilling instructions, National Docks Ry., Lehigh Valley R. R., also industries served by. *Id.* (745).



## APPENDIX—Continued.

G. Statement showing tonnage of eastbound and westbound freight handled at the New York City stations of the N. Y. C. and W. S. Railroads during 1916. *Id.* (746).

H. Commutation travel to New York City, 1900–1916. *Id.* (747).

J. Connections between trunk lines at or near New York Harbor terminals. *Id.* (748).

## APPLICATION.

Application under section 15, as amended, for authority to publish increased rates on cement, c. l., to points on C., B. & Q. R. R. in Nebraska, denied. Cement to Nebraska (No. 2), 160.

## ATTORNEY'S FEES.

Commission has no power to award counsel fees. Minnesota & Ontario Power Co. v. B. F. & I. F. Ry. Co. 208 (209).

## AVERAGE AGREEMENT.

Evidence insufficient to find that an average agreement such as is in effect at Galveston would be reasonable and should be required at New Orleans, Mobile and Pensacola. Export Freight Free Time, 162 (188).

## BACK HAUL.

Proposed cancellation of waiver of back-haul or out of route charges on grain milled in transit at certain stations in Michigan and consigned to Bryan and Toledo, Ohio, and points south and east thereof, found justified. Grain Transit at Michigan Stations, 104 (108).

## BARRIER.

Rates should not be erected as a barrier between a consuming point and a source of supply, but should in general be a medium for effecting the movement of traffic. Coal to South Dakota, 750 (754).

BASIS OF RATES. *See also* RELATIVE ADJUSTMENT.

Defendants state that it is customary to prescribe commodity rates between Colorado common points and Utah common points not less than 62½ per cent of the commodity rates on same articles between Missouri River points and Utah common points. Barrett Mfg. Co. v. A., T. & S. F. Ry. Co. 27 (30).

Rate situation at the port of New York compared with rate structure at the Ohio River crossings. New York Harbor Case, 643 (705).

Most rates were made with a view to including remuneration to the carriers not only for the line haul, but for the ordinary terminal services at point of origin and at destination. *Id.* 643 (708).

## BILLING.

Contention that charges resulting from delivering carrier changing the description of l. c. l. shipment of blank white paper, from Hamilton, Ohio, to Atlanta, Ga., were unreasonable, not sustained. Practical Drawing Co. v. C., H. & D. Ry. Co. 227 (228).

Shipments arriving at holding yards, billed to "New York Lighterage" and later ordered to a specified destination within the lighterage limits may be forwarded for \$2 per car, whereas cars reconsigned to points in New Jersey are subject to charge of \$5 per car. *Held*, Difference in transportation conditions justifies difference in charges. New York Lighterage Case, 643 (726–728).

## BILLS OF LADING.

The Commission has repeatedly held that the obligation rests upon carrier's agent to refrain from executing bills of lading which are contradictory and therefore impossible of execution. American Bridge Co. v. N. & W. Ry. Co. 235 (236).

BLANKET RATES. *See* GROUP RATES.

**BOAT LINES.**

Charleston & Norfolk S. S. Co. found not to be a common carrier within meaning of Panama Canal act and the Commission is without jurisdiction to prescribe proportional rail rates from Ohio River crossings to Norfolk, Va., in connection with rates of the proposed boat line to be operated from Baltimore, Md., and Norfolk to Charleston, S. C. Charleston & Norfolk S. S. Co. 365 (368, 371).

**BOTH DIRECTIONS.**

Rates on horses and mules from points in Kentucky, Tennessee and other states to Birmingham and Montgomery, Ala., are in practically all cases higher than rates published to apply in the opposite direction, and should be corrected. Alabama Packing Co. v. L. & N. R. R. Co. 524 (526, 531).

**BRIDGE TOLL.**

Under a Missouri statute carriers are prohibited from making any charge for crossing a river other than the regular distance rate. Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co. 287 (317).

**BROKERAGE FEES.**

Refusal of defendant to "expense forward" customs duties and brokerage fees from Newport, Vt., on shipments imported from Canada unless handled by its agent as customs broker, found unduly preferential of shippers employing defendant's agent. Emery & Co. v. B. & M. R. R. 200 (203).

**BUNCHING.**

Respondents' failure to make an allowance for the bunching of cars at New York can not be said to operate to the undue prejudice of protestants. New York Harbor Storage, 141 (146).

**BUNKER COAL.**

Proposed reduction from 10 to 5 days in the free time applicable to bunker coal at the ports of New Orleans, Mobile, and Pensacola, found justified. Export Freight Time, 162 (198).

**CANADA.**

Refusal of defendant to "expense forward" customs duties and brokerage fees from Newport, Vt., on shipments imported from Canada, unless handled by its agent as customs broker, found unduly preferential of shippers employing defendant's agent. Emery & Co. v. B. & M. R. R. 200 (203).

Transportation by rail from Canada to points in the United States via through routes can only be accomplished by compliance with the law requiring the entry, payment of custom duties, and release. Id. (201).

**CAR DISTRIBUTION.**

Complainant purchased coal from mining company to be delivered at a siding at the company's mine at Figart, Pa. Defendant refused to furnish cars unless they were counted against the allotment of cars to the mining company under their car distribution rules, *Held*, Refusal to furnish cars under the circumstances was not unreasonable or unlawful. Greenfield & Co. v. P. R. R. Co. 403 (408).

Distribution of cars by rotation to grain elevators at Vermilion, Burbank and other South Dakota points during period of car shortage, found to be unduly prejudicial to complainants and unduly preferential of their competitors at same points. Reasonable rules prescribed. Farmers' Elevator Co. v. C., M. & St. P. Ry. Co. 475 (480).

It is evident that to distribute cars by rotation when the elevators of only one shipper are filled gives an undue preference to his competitors. Id. (480).

Provision in carriers' car distribution Rule No. 584 providing that "the applications of one day must be filled before those of another day are supplied," not approved by the commission. Id. (477, 481).

It appears unwise to leave the matter of car distribution to the discretion of carriers' local agents as this practice leads to unjust discrimination. Just and reasonable rules should be devised for their guidance. Id. (482).

**CAR FLOATS.**

Car floats carry loaded cars and lighters carry freight which has been unloaded. Export Freight Free Time, 162 (165).

**CAR FURNISHING.**

Charges based on minimum weight of larger car furnished for shipment of salt from Duluth, Minn., to Calgary, Canada, found unreasonable to the extent they exceeded charges based on the marked capacity of car ordered. Reparation awarded. *Cutler-Magner Co. v. M., St. P. & S. S. M. Ry. Co.* 249 (250).

**CAR-MILE EARNINGS.** *See also* EARNINGS; TON-MILE REVENUE.

Iron and steel articles: Car-mile earnings on, in western trunk line territory, shown. *Western Trunk Lines Iron and Steel*, 109 (117).

**CAR SERVICE ACT.**

Car Service Act, approved May 29, 1917, gave the commission very broad powers to issue summary directions with respect to the movement, distribution, exchange, interchange, and return of cars. *Unification of Railroad Operation*, 757 (763).

**CAR SHORTAGE.**

The setting aside of carriers' car distribution Rule No. 584, during a period of car shortage and distributing cars to shippers of grain at Vermilion, and other South Dakota points in rotation, found to be unduly prejudicial to complainant and unduly preferential of their competitors at same points. Reasonable rules prescribed. *Farmers' Elevator Co. v. C., M. & St. P. Ry. Co.* 475 (478, 480).

**CARETAKER.**

Upon rehearing, rules governing fares of caretakers of live stock to and from Sioux City, Iowa, from points in southwestern Minnesota, found unduly prejudicial and in violation of section 4, in so far as they differ from those in effect to and from St. Paul on live stock to South St. Paul. *Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co.* 279 (281).

Different rule governing the return transportation of caretakers in connection with intrastate rates on live stock to St. Louis than with the interstate rates to East St. Louis and National Stock Yards found to subject East St. Louis and National Stock Yards to undue prejudice. *Dimmitt-Claudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (295, 321).

Transportation of caretakers held subject to the act and to the regulations of this Commission, and to the provision of section 1 which requires all regulations or practices to be just and reasonable. *Id.* (319).

Provision of section 3 prohibiting undue preference held to be applicable to the transportation of caretakers. *Id.* (319).

**CARLOAD AND LESS THAN CARLOAD.**

Rating of first class on l. c. l. shipment of metal extension curtain rods from Ogdensburg, N. Y., to Tacoma, Wash., found unreasonable to the extent it exceeded commodity rate subsequently established. Reparation awarded. *Harmon & Co. v. N. Y. C. R. R. Co.* 277 (278).

Suggested that no different rule should apply on straight carloads of blooded live stock than apply on l. c. l. shipments and that charges on such shipments should not exceed the carload rate as increased by a percentage to cover the excess value, upon which the standard rate is predicated. *Live Stock Classification*, 335 (344).

**CARRIER COMPETITION.** *See* COMPETITION (CARRIER).**CARS.**

It is in the interest of shippers as well as carriers that all cars be released as promptly as possible. Export Freight Free Time, 162 (179).

Shipper has no legal right, nor is it the duty of a carrier to furnish, a car for use as a warehouse. *Id.* (179, 196).

**CARS—Continued.**

Requirement by G. N. Ry. that grain from South Dakota points to Omaha, shall be held indefinitely at Sioux City to await the ability of G. N. Ry. to secure suitable foreign cars, is an unreasonable interference with the through movement of freight. *Omaha Grain Exchange v. G. N. Ry. Co.* 532 (536).

**CARS OFF LINE.**

Rule of the G. N. Ry. to the effect that it will not permit its cars loaded with grain at South Dakota points to move through to Omaha under through routes and joint rates in effect, found unreasonable. *Omaha Grain Exchange v. G. N. Ry. Co.* 532 (539).

Contention by defendants that the requirement of the G. N. Ry. to the effect that grain shall be transferred from its cars at the end of its line into foreign cars is not the same as a refusal to accept shipment, may be conceded. (*Id.* 536).

**CENTRAL FREIGHT ASSOCIATION TERRITORY.**

Described. *Michigan Percentage Cases*, 409 (410); *New York Harbor Case*, 643 (706).

**CHARACTERISTICS OF COMMODITY.**

Cement requires tight box cars. *Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co.* 204 (206).

Iron and steel articles: Load heavily, produces large revenue, and cars used can be returned loaded. *Western Trunk Lines Iron and Steel*, 109 (116).

Limestone and structural iron and steel: Load heavily, move in large quantities, and are not easily damaged. *Handling of Heavy Articles*, 323 (330).

Shingles: Are not only bulky but absorb moisture in storage, which increases their weight, requiring prompt shipment. *Reconsignment Case*, 590 (622).

**CIRCUITOUS ROUTE. See also LONG AND SHORT HAUL.**

There is a substantial difference between "indirect" or circuitous routes, as distinguished from so-called short-line routes, which are the principal or regular avenues of traffic. *Grain Transit at Michigan Stations*, 104 (107).

Relief from the fourth section should not be granted for the purpose of permitting extremely circuitous routes to compete with the direct lines. *Rates Between C. F. A. Territory and Points on the C. & O. Ry.* 576 (581).

**CIRCUMSTANCES AND CONDITIONS.**

Different transit rules at transit points and at open markets, where circumstances and conditions are dissimilar, are not unjustly discriminatory. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380 (398).

Requirement that the identity of shipments of live stock must be preserved at open markets, and not at country transit points, is just and reasonable under the circumstances. *Id.* (382, 397, 398).

Conditions which led to the establishment of port differentials had not even a remote connection with the factors which determined the outline of the groups in C. F. A. territory or the percentages assigned to them. *Michigan Percentage Cases*, 409 (452).

**CLAIM PAPERS.**

Commission is not empowered to direct the return by carriers of claim papers filed by shipper. *Minnesota & Ontario Power Co. v. B. F. & I. F. Ry. Co.* 208 (209).

**CLASS AND COMMODITY RATES.**

Fifth class rates assessed on wet wood pulp from Detroit, Mich., to Syracuse, N. Y., prior to reestablishment of commodity rates canceled through error, found unreasonable. Reparation awarded. *Syracuse Chamber of Commerce v. M. C. R. R. Co.* 14.

Class and commodity rates between Beaver Falls, N. Y., and points on the N. Y. C. R. R. outside of the State of New York, higher than rates to or from Lowville, N. Y., the junction point of the two lines, found not unreasonable or unduly prejudicial. *Complaint dismissed. Lewis Co. v. L. & B. R. R. Co.* 79.

**CLASS AND COMMODITY RATES—Continued.**

Class rates on empty tin cans, from Baltimore, Md., to Philadelphia, Pa., Camden, N. J., Bethlehem, Md., and other points, moving interstate, found unreasonable to the extent that they exceeded commodity rates subsequently established. Reparation awarded. *Continental Can Co. v. A. C. R. R. Co.* 82.

Class rate on empty tin cans, c. l., from Baltimore, Md., to North Wilkesboro, Elkin, and other North Carolina points, found unreasonable to the extent that it exceeded commodity rate subsequently established. Reparation awarded. *Southern Can Co. v. S. Ry. Co.* 85.

Application of fifth-class rates on stoves and related articles in lieu of commodity rates, found justified. *Western Trunk Lines Iron and Steel*, 109 (112, 128).

Proposed increase in commodity rates on iron and steel articles to fifth-class basis, applying within western trunk line territory and from points east of Chicago and the Mississippi River to points in western trunk line territory found not justified generally, but rates slightly higher than now maintained allowed. *Id.* (128, 129).

Class rates on lumber from Maylene, Ala., to Chattanooga, Tenn., found unreasonable to the extent that they exceeded commodity rate subsequently established. Reparation awarded. *Advance Lumber Co. v. S. Ry. Co.* 237 (238).

Rating of first class on l. c. l. shipment of metal extension curtain rods from Ogdensburg, N. Y., to Tacoma, Wash., found unreasonable to the extent it exceeded commodity rate subsequently established. Reparation awarded. *Harmon & Co. v. N. Y. C. R. R. Co.* 277 (278).

Percentages of the New York-Chicago rates assigned to certain groups in the State of Michigan, found to result in undue prejudice to the lower peninsula of Michigan in favor of Detroit, Mich., and points in Ohio and Indiana. *Michigan Percentage Cases*, 409 (458).

Rating of sixth class on talc, c. l., from New York, N. Y., to Concord, N. C., found unreasonable to the extent it exceeded commodity rate subsequently established. Reparation awarded. *Kerr Bleaching & Finishing Works v. O. D. S. S. Co.* 472 (473).

Statement showing changes in rates on representative articles from Ohio River crossings, St. Louis, and Memphis, to Tuscaloosa, Birmingham, and Montgomery, Ala. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (495-496).

Rate on any commodity to or from any intermediate point shall not exceed the rate on the same commodity to or from the next more distant point to or from which a lower rate is charged by a greater amount than the rate to or from the intermediate point on the class to which the commodity belongs exceeds the rate on the corresponding class to or from the more distant point. Rates between C. F. A. Territory and Points on the C. & O. Ry. 576 (580).

**CLASS RATES.**

Alleged that rate of  $1\frac{1}{2}$  times first class on l. c. l. shipment of household goods, from Fairmont, W. Va., to Portland, Oreg., was unreasonable to the extent it exceeded first-class rate. *Held*, no value declared. Evidence insufficient upon which to base a finding. *Perdue v. B. & O. S. W. R. R. Co.* 210 (212).

Contention that charges based on combination first-class rates on blank white paper from Hamilton, Ohio, to Atlanta, Ga., should not have exceeded charges based on first-class rate to Cincinnati and fourth-class rate beyond, not sustained. *Practical Drawing Co. v. C., H. & D. Ry. Co.* 227 (228).

Statement showing old and new class rates and short line distances from New York, Baltimore, Pittsburgh and other representative points to Tuscaloosa, Birmingham, Montgomery and Selma, Ala. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (488-489).

## CLASSIFICATION.

## In general:

A classification can not be regarded as scientific, or a difference in rates as well based, which is altogether founded upon a distinction that has no transportation significance. Official Classification No. 44, 91 (94).

Acetylene gas cylinders, coppered, nicked or painted, c. l.: Ratings of third class and fourth class on, from Cincinnati, Ohio, to Atlanta, Ga., originating at Speedway, Ind., found unreasonable to the extent that they exceeded sixth-class rating contemporaneously in effect. Reparation awarded. Prest-O-Lite Co. (Inc.) v. C., H. & D. Ry. Co. 22 (24).

Bearings: Proposed increased ratings on roller bearings, other than car bolster, in official classification territory, found not justified and present ratings found unreasonable to the extent that they exceed third-class l. c. l. and fourth-class c. l. Official Classification No. 44, 91 (103).

Blankets, horse: Rating of first class in official classification territory, not shown to be unreasonable or unduly prejudicial as compared with cotton blankets rated 15 per cent less than second class. Complaint dismissed. Wallace-Smith & Co. v. B. & M. R. R. 62.

Cheesecloth, old: Rating on rags found legally applicable on shipments of old cheesecloth from Windsor Locks, Conn., to Quincy, Fla. American Sumatra Tobacco Co. v. N. Y., N. H. & H. R. R. Co. 243 (245).

Clippings: Proposed increased ratings on tailor's woolen clippings in official classification territory, found not justified. Official Classification No. 44, 91 (94).

Lamp guards, incandescent, not nested: Double first-class rating on, in official and western classification territories, not shown to have been unreasonable. Complaint dismissed. Matthews & Brother v. C. & E. I. R. R. Co. 36.

Live stock: Proposed increased rates on l. c. l. live stock, loose or crated, in official and southern classification territories, found not justified. Reasonable rating and minimum weight prescribed. Live Stock Classification 335 (342).

Pipe, blower: Double first-class rating assessed on 12 pieces of blower pipe shipped in connection with an ensilage cutter on which third-class rating was applied, found legally applicable and not shown to be unreasonable. Wausau Southern Lumber Co. v. G. & S. I. R. R. Co. 507 (508).

Springs: Third-class rating assessed on l. c. l. shipments of springs made of  $\frac{1}{8}$  and  $\frac{5}{8}$  inch material and packed one within the other, in barrels, not found unreasonable or unjustly discriminatory as compared with Rule 26, providing for rating of 20 per cent less than third class on springs made of material  $\frac{1}{8}$  inch or over in thickness, as charges were properly collected on basis of the highest rated article in the package. Temco Electric Motor Co. v. B. & O. R. R. Co. 76 (77).

Stone: Proposed change in ratings and increased minimum weight on natural stone in official classification territory, justified. Official Classification No. 44, 91 (98, 99).

Tar-heating tank: Former finding that rating of  $1\frac{1}{2}$  times first class on, from Frankfort, N. Y., to Portland, Oreg., affirmed on rehearing. Beall & Co. v. O.-W. R. R. & N. Co. 474.

Transplanters, other than tree transplanters, k. d., without barrels, l. c. l.: Rating of first class from Racine, Wis., to Portland, Oreg., found unreasonable to the extent that it exceeded second-class rates. Reparation awarded. Mitchell, Lewis & Staver Co. v. C. & N. W. Ry. Co. 71.

Wood joint fasteners: Rating of third class on l. c. l. shipments in western classification territory, found unreasonable to the extent that it exceeded fourth class rating on steel dowel pins and nails. Acme Steel Goods Co. v. A., T. & S. F. Ry. Co. 18.



**CLAYTON ANTI-TRUST ACT.**

The power to hold a hearing and decide whether or not specific sections of the Clayton antitrust act are being or have been violated confers no jurisdiction to determine whether or not certain contemplated or proposed acts would constitute violations of those sections. *Charleston & Norfolk S. S. Co.* 365 (368).

**COASTWISE TRAFFIC.**

There is no substantial difference between export and coastwise traffic with respect to transfer from cars to ship. *Export Freight Free Time*, 162 (180).

**COMBINATION RATES.**

Rates on corn from points in Iowa and Nebraska to Minneapolis, Minn., reshipped to points in California, found upon rehearing to have been illegal to the extent that they exceeded joint through rate plus any applicable demurrage and reconsigning charges. Reparation awarded. *Van Dusen Harrington Co. v. C., M. & St. P. Ry. Co.* 59.

Combination class and commodity rates between Beaver Falls, N. Y., and points on the N. Y. C. R. R. in excess of the rates to or from Lowville, N. Y., and the point of junction between the L. & B. R. R. R. and the N. Y. C. R. R., found not unreasonable or unduly prejudicial. Complaint dismissed. *Lewis Co. v. L. & B. R. R. R. Co.* 79 (81).

**COMMERCIAL AND ECONOMIC CONDITIONS.**

It is clearly impossible to condemn an adjustment whereby due recognition is given to the geographic, commercial, and economic unity. *New York Harbor Case*, 643 (737).

**COMMISSIONS.**

Increased commissions charged by the live-stock dealers for selling stock on the East St. Louis market does not appear to have operated to prejudice the movement of live stock to that market. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (293).

**COMMITTEE.** *See also RAILROAD WAR BOARD.*

Appointed by governor to prosecute the case herein. *New York Harbor Case*, 643 (666).

**COMMODITY RATES.**

Comparison of special commodity boat rates on various articles from Mobile, Ala., to Tuscaloosa, Selma, and Montgomery, Ala., when taken in combination with rates to Mobile, portray the extent to which river competition is reflected in the through all-rail rates. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (502).

**COMMON CARRIER.**

Commission's jurisdiction restricted to common carriers. *Charleston & Norfolk S. S. Co.* 365 (367).

In order to constitute a common carrier something more substantial is required than a desire for special rates which may be used at some future time should certain contingencies happen. *Id.* (371).

**COMMUTATION.**

Statement of commutation travel to New York City, 1900-1916. Appendix H. *New York Harbor Case*, 643 (747).

**COMPARATIVE RATES.**

Cheesecloth, old: Rating on rags found legally applicable on shipments of old cheesecloth from Windsor Locks, Conn., to Quincy, Fla. *American Sumatra Tobacco Co. v. N. Y., N. H. & H. R. R. Co.* 243 (245).

Feed: Rates on live stock feed in carloads and live stock feed and poultry feed in mixed carloads from Waukegan, Ill., to points in western trunk line territory, found unreasonable in so far as they exceeded rates in effect on grain products. Reparation awarded. *Blatchford Calf Meal Factory v. E. J. & E. Ry. Co.* 10.

**COMPARATIVE RATES—Continued.**

**Iron and steel articles:** Rates of fifth class on iron and steel articles in western trunk line territory compared with fifth-class rates on sugar, canned goods, window glass, and dried beans and peas. *Western Trunk Lines Iron and Steel*, 109 (117).

**Live stock:** Comparison of rates on live stock with rates on agricultural implements, canned goods, grain, lumber, and machinery are not without their serious limitations. Bare comparisons may be equally demonstrative, at least theoretically, of the comparatively high level of the rates on the other commodities as of the comparatively low level of the rates on live stock. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (303-304).

**Logs, low-grade cedar:** Rates on carload shipments from points in Alabama, Tennessee, and Georgia to Atlanta, Ga., found upon rehearing to have been unreasonable to the extent that they exceeded rates contemporaneously in effect on common logs from and to same points. Reparation awarded. *Nebraska Bridge Supply & Lumber Co. v. N., C. & St. L. Ry.* 39.

**Peanuts:** Rates on, from Houston, Tex., to Chicago, Ill., St. Louis, Mo., and other points compared with rates on clean rice. *Fidelity Cotton Oil Co. v. A. & V. Ry. Co.* 542 (546).

**Peanuts:** Shelled peanuts are comparable from a transportation standpoint with wheat, flour, clean rice, and cowpeas, in everything except value, carload minimum, and amount of shipments. *Id.* (547).

**Pipe:** Rates on pipe compared with rates on various other iron and steel articles. *Western Trunk Lines Iron and Steel*, 109 (121, 122).

**Pipe:** Rates on cast-iron pipe compared with rates on wrought pipe. *Id.* (126)

**Rice and products:** Rates on clean rice and products compared with rates on cereals and cereal products. *Arkansas Rice Shippers Traffic Bureau v. A. A. R. R. Co.* 566 (572).

**Stone:** Rate on stone, rough, sawed four sides or less from points in the Bedford district to Omaha, Nebr., found unduly prejudicial to the extent that it is not 2 cents less than rate on dressed, planed, or sawed stone. *Schall Co. v. B. & O. S. W. R. R. Co.* 254 (258).

**Tile, gypsum:** No difference in value, risk of carriage, carload weight, or other incident of transportation as to warrant a rate on, so much higher than on clay tile. *Acme Cement Plaster Co. v. A., C. & Y. Ry. Co.* 1 (5).

**Wood joint fasteners:** Rating of third class on, in western classification territory, found unreasonable to the extent that it exceeded fourth-class rating on steel dowel pins and nails. *Acme Steel Goods Co. v. A., T. & S. F. Ry. Co.* 18.

**COMPETING LINES.**

Respondents can not be compelled to give use of their terminal facilities to competing lines, but they may be required to perform, upon just and reasonable terms, switching service between connecting lines and industries located on their own rails. *Switching Absorptions*, 583 (586).

**COMPETITION.**

**In general:**

Proof that rates are the result of competitive forces does not necessarily mean that they are too low, for competition may sometimes be needed to keep rates at a reasonable level. *Western Trunk Lines Iron and Steel*, 109 (113-114).

Effect of, upon railroads since they began operation. *Unification of Railroad Operation*, 757.

**Articles:**

Competition in grain and flour is national in scope, and transit should not be regarded merely from the standpoint of the service performed at any particular point. *Royal Milling Co. v. G. N. Ry. Co.* 263 (266).

**COMPETITION—Continued.****Carrier:**

Intense competition of carriers for the heavy tonnage produced by pipe had much to do with establishment of commodity rates thereon. *Western Trunk Lines Iron and Steel*, 109 (125).

Competition has brought to a common level the rates of transportation published by all of the carriers serving the port of New York. *Handling of Heavy Articles*, 323 (332).

**Market:**

Complainants compete at Wilmington and Philadelphia with dealers in lumber at Norfolk and other points in Virginia and points in North Carolina on lines serving Norfolk from the south and west. *Coulbourn v. N. Y., P. & N. R. R. Co.* 54 (55).

In addition to what may be called the market or market-and-carrier competition from the Lake Erie ports to western trunk line territory, the rail lines from Chicago have had to reckon with the carrier competition of the lake-and-rail lines from Chicago to St. Paul. *Western Trunk Lines Iron and Steel*, 109 (111).

Competition of Chicago with Milwaukee is not a valid reason for holding down the rate from Chicago to Winona and La Crosse to the detriment of Minneapolis. *Id.* (118).

**Potential:**

Owing to unusual maritime conditions which now exist the carrier competition from Chicago is merely potential, but when boats were available a large tonnage was shipped by lake. *Western Trunk Lines Iron and Steel*, 109 (111).

Threatened and not actual competition induced a reduction in rates, no consideration may be properly given to that circumstance. *California Pine Box & Lumber Co. v. S. P. Co.* 372 (375-376).

Reduction in rates from all points in Massachusetts on the B. & M. R. R. to Norfolk, Va., due to threatened water competition. *National Utilization Corporation v. B. & A. R. R. Co.* 467.

**Water:**

Urged that the rate from Norfolk to Philadelphia and Wilmington is a low rate compelled by water. *Coulbourn v. N. Y., P. & N. R. R. Co.* 54 (56).

Practically no consideration was given to water competition in determining the percentages of the various groups in C. F. A. territory. *Michigan Percentage Cases*, 409 (443, 444).

Comparison of special commodity boat rates on various articles from Mobile, Ala., to Tuscaloosa, Selma, and Montgomery, Ala., when taken in combination with rates to Mobile, portray the extent to which river competition is reflected in the through all-rail rates. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (502).

**COMPETITIVE CONDITIONS.**

Carriers' recognition of competitive influences, which have had the effect of bringing to a common level most of the rates to and from New York Harbor, resulting in an equality of rates throughout the zone, not found unlawful. *New York Harbor Case*, 643 (738).

**CONCENTRATION AND COMPRESSION. See TRANSIT ARRANGEMENT.****CONFISCATORY RATES.**

Rates may be nonconfiscatory and yet fall short of being just and reasonable. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (298).

**CONGESTION.**

Conditions existing at the port of New York, i. e., number of carloads of freight in warehouses, and number waiting warehouse space, shown. New York Harbor Storage, 141 (151).

Gauging the reasonableness and propriety of remedial measures proposed primarily for the amelioration of the general congestion at the port it would seem fair to consider the detention on tracks as well as the detention on piers. *Id.* (151).

Attempts made in good faith by the carriers serving the port of New York to relieve congestion should be approved. *Id.* (155).

Average detention of cars loaded with export freight at the port of New York, shown. Export Freight Free Time, 162 (166, 171).

Congestion at port of New York might be relieved to a considerable extent if vessels were to serve other ports of the country to which there would be a much shorter rail haul. *Id.* (170).

Any reasonable action upon the part of the carriers to keep freight cars moving and to eliminate terminal congestion is manifestly in the public interest, and should not only be approved but encouraged by the Commission. *Id.* (179, 196).

There can be no justification for a policy that permits certain terminals to be congested with a surplus of freight while at the same time a near-by terminal has not enough traffic to keep it busy. New York Harbor Case, 643 (733).

**CONGRESS.**

Special report to. Unification of Railroad Operation, 757.

**CONNECTING LINES.**

Connections between trunk lines at or near New York harbor terminals. Appendix J. New York Harbor Case, 643 (748).

**CONSIGNOR AND CONSIGNEE.**

Complainant (consignee) bought certain shipments of blackstrap molasses f. o. b. point of origin. Consignor guaranteed rate not to exceed 21 cents, and deducted this amount from the invoice. Complainant's claim for reparation on basis of subsequently established rate of 15 cents, denied. Rapier Sugar Feed Co. v. L. & N. R. R. Co. 222.

Proposed charges of \$2 and \$5 per car for change in name of consignor on reconsigned shipments, justified to extent that they do not exceed \$1 per car. Reconsignment Case, 590 (616)..

**CONTINUOUS CARRIAGE.**

Requirement by the G. N. Ry. that grain from South Dakota points, destined to Omaha, shall be held indefinitely at Sioux City to await the ability of the G. N. Ry. to secure suitable foreign cars, is an unreasonable interference with the free through movement of freight. Omaha Grain Exchange v. G. N. Ry. Co. 532 (536).

**CONTRACTS.**

Defendant refused to place cars on complainant's spur track near Rockwood, Tenn., for shipment of tan bark, as agreed, on account of its being on a steep grade, while subsequently placing a car there for another shipper. Contention of unjust discrimination not sustained. Kindred v. C., N. O. & T. P. Ry. Co. 73.

Carriers' failure to complete a transportation service contracted for is not a basis for an award of reparation under the act to regulate commerce. Eagle Pass Lumber Co. v. G., H. & S. A. Ry. Co. 219 (220).

Contracts for the sale of box shooks and box material are made in advance, and usually run for one or two years. California Pine Box & Lumber Co. v. S. P. Co. 372 (377).

**CONTRACTS—Continued.**

Complainant entered into a contract for the purchase of all coal from a coal mining company in addition to their regular mine rating, to be delivered at a siding at the mine. Defendant's refusal to furnish cars unless same were counted against the regular allotment of cars to the mine not found unlawful. *Greenfield & Co. v. P. R. R. Co.* 403 (408).

**COST OF SERVICE.**

Cost of expedited service given to live stock and the proportion which the loss and damage claims bear to the total charges paid is much greater than the ordinary service given to freight in general. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (302).

Carriers are entitled to charge the actual cost and a reasonable profit for reconsignment service. By "cost" is meant operating cost, and by "profit" a return upon investment in the proportion that it is devoted to the service. *Reconsignment Case*, 590 (600).

Cost of transferring freight across the harbor in lighters and car floats. *New York Harbor Case*, 643 (672).

In determining the cost of terminal service at New York consideration should be given to the time employed and to the delays encountered. *Id.* (673).

To determine the cost of delivering freight at stations in New Jersey, as against Manhattan and Brooklyn, it would seem proper to take the general classification yard as the starting point and compare the service from that point to the various points of delivery. *Id.* (675).

Cost of lighterage service on traffic to Manhattan compared with cost of switching to and from industries and piers on the Jersey side. *Id.* (676-680).

The practice of disregarding the cost of a specific service in constructing rates for long hauls while including it in the rates for shorter distances, may well be accepted as one of the established principles of rate making. *Id.* (701).

Following cases cited it is impossible to conclude that terminal costs must be recognized in the construction of rates for long hauls solely because they are reflected in the rates for shorter hauls. *Id.* (702).

Commission can not condemn a rate solely because it is not constructed on the principle of cost of service. *Id.* (736).

A rigid application of the cost principle would lead to a complete change in the whole rate structure here under consideration. *Id.* (738).

**CUMMINS AMENDMENT.**

Statute of Missouri governing released rates, if applied to interstate traffic, would be in violation of the so-called Cummins amendment and therefore void.

*Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (319).

In view of the amended Cummins amendment, carriers in official classification territory required to cancel proposed schedules which provide rates on ordinary live stock dependent upon value. *Live Stock Classification*, 335 (344).

**CUSTOMS DUTIES.**

Refusal of defendant to "expense forward" customs duties and brokerage fees from Newport, Vt., on shipments imported from Canada, unless handled by its agent as customs broker, found unduly preferential of shippers employing defendant's agent. *Emery & Co. v. B. & M. R. R.* 200 (203).

**DAMAGES.**

Rates cited in comparison were increased to the level of rates complained of. No question raised as to the reasonableness of the rate for the future, only purpose being to secure reparation. Complaint dismissed. *Swift & Co. v. U. P. R. R. Co.* 49 (52).

**DAMAGES—Continued.**

Discriminatory adjustment of rates on egg-case fillers from Coffeyville, Kans., to Gentry, Ark., have been corrected. No proof of damage shown. Complaint dismissed. *Creamery Package Mfg. Co. v. K. O. S. Ry. Co.* 84.

Claim by complainant for reparation based on loss of brokerage fees, resulting from advantages accruing to shippers who employed defendant's agent as their broker at Newport, Vt., denied. *Emery & Co. v. B. & M. R. R.* 200 (203).

Refund for overcharges on newsprint paper from International Falls, Minn., to Little Rock, Ark., on account of illegal rate and erroneous weight, authorized. *Minnesota & Ontario Power Co. v. B. F. & I. F. Ry. Co.* 208 (209).

Carriers' failure to complete a transportation service contracted for is not a basis for an award of reparation under the act. *Eagle Pass Lumber Co. v G., H. & S. A. Ry. Co.* 219 (220).

**DELAY.**

No operating rule is reasonable or lawful which requires holding of traffic in cars for an indefinite period at junction points. *Omaha Grain Exchange v. G. N. Ry. Co.* 532 (538).

Experience should enable carriers and shippers to determine where to draw the line between ordinary and extraordinary delays. *Reconsignment Case*, 590 (631).

**DELEGATION OF AUTHORITY.**

The statute does not confer upon this Commission the power to regulate the purchase and sale of articles. *National Live Stock Exchange v. O., B. & Q. R. R. Co.* 380 (395).

**DELIVERY.**

Defendant refused to place cars on complainant's spur track near Rockwood, Tenn., for shipment of tan bark, as agreed, on account of its being on a steep grade, while subsequently placing a car there for another shipper. Contention of unjust discrimination not sustained. *Kindred v. C., N. O. & T. P. Ry. Co.* 73.

Contended that export freight held at the New Jersey terminals awaiting delivery to vessels are still in the course of transportation; that delivery is not completed until shipment reaches vessel; that imposition of storage charges on such shipments is unlawful. *Held*, If railroad company is forced to hold shipments, as a result of commercial condition, it can not be denied reasonable compensation for storage thus furnished. *New York Harbor Storage*, 141 (153-159).

Carriers permitted to add a charge of \$2.50 per car to scale of rates prescribed on live-stock shipments for delivery to the stockyards and packing-houses. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. O., B. & Q. R. R. Co.* 287 (318).

Transportation of live stock does not terminate until after the stock has been unloaded by the carrier into suitable pens, and it is carriers duty to provide such facilities. *Id.* (318).

Shipments arriving at holding yards, billed to "New York Lighterage" and later ordered to a specified destination within the lighterage limits may be forwarded for \$2 per car, whereas cars reconsigned to points in New Jersey are subject to charge of \$5 per car. *Held*, Difference in transportation conditions justified difference in charges. *New York Lighterage Case*, 643 (726-728).

**DEMURRAGE.**

On certain shipments of lumber to New Orleans, for export, sailing dates were canceled on account of war. Cars were held on tracks 20 days, and to avoid extra expense, switched and stored. Tariff provided that 10 days free time on export shipments would apply only to cars on tracks of line having line haul and not after shipment had been switched to another track. Shipments were later exported and their status remained the same. Demurrage charges should have been on export basis. Reparation awarded. *Newman Lumber Co. v. N. O. & N. E. R. R. Co.* 33.



**DEMURRAGE—Continued.**

Refusal of line-haul carriers to release cars to switching line for delivery until payment or guarantee of charges, resulting in the accrual of demurrage, found not justified. Demurrage charges not collected. Complaint dismissed. *Alexander Brothers Lumber Co. v. P. M. R. R. Co.* 69.

The Commission has sanctioned increased demurrage and storage charges and permitted reductions in free time in order to keep freight cars on the move. *Export Freight Free Time*, 162 (177).

Demurrage does not accrue, under a general demurrage tariff, against a car which has been offered for reconsignment to an embargoed point upon the general principle that demurrage is assessable for detention for which the shipper is directly responsible and can abate, while an embargo is placed by reason of the carriers' disability. *Reconsignment Case*, 590 (634).

**DENSITY OF TRAFFIC.**

Comparative statement showing freight traffic density of large lines in Michigan to be materially less than that of some lines in Ohio, Indiana, and Illinois. *Michigan Percentage Cases*, 409 (445).

**DEPRESSED RATES.**

Rates on iron and steel articles from Chicago to St. Paul have, for many years, been depressed by the rates applying to St. Paul via the lake-and-rail lines from Cleveland, Erie, and Buffalo. *Western Trunk Lines Iron and Steel*, 109 (111).

**DETENTION.**

Average detention of cars loaded with export freight at the port of New York, shown. *Export Freight Free Time*, 162 (166, 180).

If detention of cars is due to want of facilities of the shipper, or other matters for which respondents are not responsible, proper steps to prevent the detention are justified. *Id.* (197).

**DEVELOPMENT.**

History of the industrial progress and increase in population in the state of Michigan. *Michigan Percentage Cases*, 409 (414).

History of the development of the rice industry in Louisiana, Texas, and Arkansas. *Arkansas Rice Shippers Traffic Bureau v. A. A. R. R. Co.* 566 (567).

Discussion of industrial progress of the state of New Jersey. *New York Harbor Case*, 643 (716).

Charts showing the percentages of increase in population, number of persons engaged, and capital invested, in manufacturing in the state of New Jersey, as compared with percentages of increase in lesser New York, greater New York, New York state, and the United States. *Id.* (718-720).

Plans being made and carried out for the development of the port of New York. *Id.* (731).

**DIFFERENTIALS.**

Rates on apples, from points in Arkansas to Muskogee, Okla., found unduly prejudicial to the extent that they exceed by more than 5 cents per 100 pounds rates to Ft. Smith, Ark. *Muskogee Produce Co. v. St. L. & S. F. R. R. Co.* 239 (242).

Rate on stone, rough, sawed on four sides or less, from Bedford, Ind., district to Omaha, Nebr., found unduly prejudicial to the extent it is not 2 cents less than rate applicable on dressed, planed or sawed stone. *Schall Co. v. B. & O. S. W. R. R. Co.* 254 (258).

Rates on lumber and other forest products, other than yellow pine, from points in Missouri, Texas and other states to Sioux City, found unduly prejudicial to the extent they exceeded by more than 2 cents the rates contemporaneously maintained to Omaha. *Traffic Bureau Sioux City Commercial Club v. A. & W. Ry. Co.* 347 (354).

**DIFFERENTIALS—Continued.**

Conditions which lead to the establishment of port differentials had not even a remote connection with the factors which determined the outline of the group in C. F. A. territory or the percentages assigned to them. *Michigan Percentage Cases*, 409 (452).

Rates on yellow pine lumber, from group 5 in the yellow pine blanket and group 8 in northeastern Arkansas to Sioux City, Iowa, should not exceed by more than 2 cents the rates to Omaha, Nebr., prescribed for lumber other than yellow pine in 47 I. C. C., 347. Lumber to Sioux City, Iowa, 540 (541).

Agreement entered into between lines serving New York in 1877 as result of rate war providing for differentials between Boston, New York, Philadelphia and Baltimore, discussed. *New York Harbor Case*, 643 (682).

There is merit in the contention that if the New Jersey cities have lower rates to and from territory immediately to the west, New York should have a corresponding advantage with respect to New England traffic for substantially similar distances. *Id.* (703).

**DIRECT LINES.** *See* CIRCUITOUS ROUTES.

**DISCRIMINATION.** *See also* PREFERENCES AND PREJUDICES.

Difference in free time on export traffic at north Atlantic ports and at Gulf ports not found unjustly discriminatory against the Gulf ports. *Export Freight Free Time*, 162 (188, 197).

**DISPARITY OF RATES.**

The new rate structure in the southeast indicates substantial compliance with the Commission's orders in 30 I. C. C., 153, and 32 I. C. C., 61, which changes have in most instances materially lessened the rate disparities existing against Tuscaloosa. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (487).

**DISTANCES.**

Mere distance comparisons of the nearer points in one group with specific points in lower rated groups without reference to the group adjustment as a whole, held not to warrant the making of another group to include the complaining points. *Galion Iron Works & Mfg. Co. v. B. & O. R. R. Co.* 136.

Average distance and rates shown on coke from the Connellsville district to Bucyrus, Crestline, Galion and Marion, Ohio, in the eastern part of the \$1.95 rate group and points in the \$1.85 and \$1.65 rate groups. *Id.* (138).

Statement showing the distance actually used in 1876 and 1879 in constructing rates from representative points in C. F. A. territory, together with the short line distances. *Michigan Percentage Cases*, 409 (426).

**DIVERSION.** *See also* RECONSIGNMENT.

Following *Central Commercial Co. Cases*, 27 I. C. C., 114; 33 I. C. C., 164; *Doran & Co. Case*, 33 I. C. C., 523; *Held*, That defendants should have provided for the diversion of a carload of lumber from Epley, Miss., to Hanover, Pa., at Potomac Yard, Va., on basis of through rate plus charge of \$5 for extra service incident to the diversion. *Reparation awarded. Harrison v. M. C. R. R. Co.* 259.

**DIVISIONS.**

Contention that divisions contribute to the unreasonableness of a joint through rate, not sustained upon the evidence submitted. *Southern Lumber & Mfg. Co. v. Tennessee Ry. Co.* 87.

Upon petition divisions prescribed for joint rates on cement, from Cape Girardeau, Mo., to points in southern Illinois, found reasonable in 35 I. C. C., 109, *Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co.* 204 (208).

Commission can not act upon the theory that a controversy among carriers regarding divisions does not affect protestants or shippers. *Switching Absorptions*, 583 (586).

The burden is upon respondents to justify the increased charges, and this can not be done by asserting that those formerly in effect afforded unsatisfactory divisions of the through charges. *Id.* (586).

**DOCKS.**

Description of wharf system at New Orleans and other Gulf ports. Export Freight. Free Time, 162 (182).

**DRESSED WEIGHT BASIS.**

From the year 1880 up to and including the year 1890 about 25,000 carloads of live hogs moved annually to the far eastern packers on the dressed weight basis. National Live Stock Exchange v. C., B. & Q. R. R. Co. 380 (388).

**DUTY OF CARRIER.**

Primary duty of carrier is to afford carriage or transportation, and after actual movement has ceased, to allow a reasonable time to remove the lading from the car. Export Freight Free Time, 162 (196).

Under through routes established and joint rates published, carriers are obliged to move shipments through promptly from points of origin to destination. Omaha Grain Exchange v. G. N. Ry. Co. 532 (538).

**EARNINGS. See also CAR-MILE EARNINGS; TON-MILE REVENUE.**

Beer: Ton-mile and car-mile earnings stated for an average distance of 800 miles Ramsey & Co. v. A., T. & S. F. Ry. Co. 64 (66).

Iron and steel: Statement of earnings on present and proposed rates, Kansas City to Iowa and Minnesota points, compared with earnings on rates from Chicago and St. Louis. Western Trunk Lines Iron and Steel, 109 (133).

Live stock: Average car-mile earnings on live stock compared with the average car-mile and ton-mile earnings on all freight. Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co. 287 (298).

Lumber: Ton-mile and car-mile earnings on lumber from Owensboro, Ky., to New York, N. Y., over short line distance, shown. Stimson v. L., H. & St. L. Ry. Co. 508 (510).

Mussel shells: Ton-mile and car-mile earnings for haul of 810 miles, shown. Kath Co. v. A., T. & N. Ry. Co. 42 (43).

Pipe: Rates and earnings on pipe compared with earnings on other commodities between the Mississippi and the Missouri rivers. Western Trunk Lines Iron and Steel, 109 (122).

Salt: Ton-mile and car-mile earnings on salt for distance of 1,162 miles, shown. Lafayette Chamber of Commerce v. A. & V. Ry. Co. 246 (247).

Stone: Ton-mile and car-mile earnings on stone, from the Bedford district to Omaha, Nebr., shown. Schall Co. v. B. & O. S. W. R. R. Co. 254 (256).

Wood-pulp board: Ton-mile and car-mile earnings from Beaver Falls, N. Y., to Chicago, Ill., 809 miles, shown. Lewis Co. v. L. & B. R. R. R. Co. 79 (81).

**EMBARGO. See also MEXICO.**

Proposed regulation prohibiting reconsignment to an embargoed point justified in part. Reconsignment Case, 590 (633-635).

**EMPTY MOVEMENT.**

Defendants urge that the empty haul of the tank cars must be considered in connection with the earnings on tar in tank-car loads. Barrett Mfg. Co. v. A., T. & S. F. Ry. Co. 27 (29).

It was pointed out that defendants are required to pay 1 cent per mile for the use of both loaded and empty refrigerator cars in which beer is shipped, and that these cars are either returned empty or used to return empty containers, which take a very low rate. Ramsey & Co. v. A., T. & S. F. Ry. Co. 64 (66).

Empty movement of tank cars used in Kansas-Oklahoma oil traffic is practically 100 per cent of loaded movement. National Petroleum Asso. v. M., K. & T. Ry. Co. 355 (356).

**EQUIPMENT.** *See also* CARS.

Within proper limitations and with due regard to their obligations to the public, carriers have the right to make reasonable regulations for the conservation of their equipment. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380 (395).

Cost of floating equipment, lighters and car floats, shown. *New York Harbor Case*, 643 (673).

**ERIE CANAL.**

Detail description and history of its development. *New York Harbor Case*, 643 (656, 661).

**ERROR.**

Commodity rate on wet wood pulp, canceled through error, but subsequently reestablished. *Syracuse Chamber of Commerce v. M. C. R. R. Co.* 14.

Through error, rate established on coconut oil was made applicable on imported oil only, resulting in charges on coconut oil from San Francisco, Cal., to Ivorydale, Ohio, which were unreasonable. Reparation awarded. *Proctor & Gamble Co. v. C., O., C. & St. L. Ry. Co.* 231.

**EVIDENCE.**

Hearsay evidence objected to. Commission not prepared to require a strict adherence to the rules of evidence in its proceedings. *Western Trunk Lines Iron and Steel*, 109 (122).

While rates of U. P. and O. S. L. from Rock Springs, Hanna and Cumberland to South Dakota points are more or less involved in this proceeding the evidence of record is not sufficient to justify an order against those originating lines. *Coal to South Dakota*, 750 (756).

**EXHIBITS.** *See* APPENDIX.**EXPEDITED SERVICE.** *See also* "MANIFEST" OR "SYMBOL" TRAINS.

Contention that the failure to uniformly place freight from New Jersey in fast freight manifest trains, causing additional expense by trucking freight to Manhattan to make sure of this service, results in undue prejudice to northern New Jersey shippers, not sustained. *New York Harbor Case*, 643 (729).

Priority director, designated by the President under act approved August 10, 1917, is authorized to direct that traffic essential to the national defense shall be given priority in transportation. *Unification of Railroad Operation*, 757 (763).

**EXPENSING FORWARD.**

Refusal of defendant to "expense forward" customs duties and brokerage fees from Newport, Vt., on shipments imported from Canada unless handled by its agent as customs broker, found unduly preferential of shippers employing defendant's agent. *Emery & Co. v. B. & M. R. R.* 200 (203).

**EXPORT AND DOMESTIC.**

Method of handling flour at the port of New York, shown. *New York Harbor Storage*, 141 (143).

Alleged that the granting of a longer free time on export than on domestic traffic is in the nature of a gratuity or concession which the carriers may grant but which this Commission may not legally require. *Held*, Circumstances and conditions controlling export traffic are substantially dissimilar. *Export Freight Free Time*, 162 (178).

**EXPORTS AND IMPORTS.**

Approximately 50 per cent of the country's total export and import traffic passes through the port of New York. *New York Harbor Case*, 643 (649).

Annual average value of exports and imports stated by 10-year periods, 1861-1913, New York as compared with Boston, New Orleans, Philadelphia, Baltimore, and Galveston. *Appendix C. Id.* (742).

**EXPORT TRAFFIC.**

On certain shipments of lumber to New Orleans, for export, sailing dates were canceled on account of war. Cars were held on tracks 20 days, and to avoid extra expense, switched and stored. Tariff provided that 10 days' free time on export shipments would apply only to cars on tracks of line having line haul and not after shipment had been switched to another track. Shipments were later exported and their status remained the same. Demurrage charges should have been on export basis. Reparation awarded. *Newman Lumber Co. v. N. O. & N. E. R. R. Co.* 33

Proposed reduction from 15 to 5 days in the free time allowed on export traffic at the north Atlantic ports, and from 10 to 5 days at Gulf ports, found not justified. Reduction to 10 days at the north Atlantic ports, and to 7 days at Gulf ports, found reasonable. *Export Freight Free Time*, 162 (180, 189).

Value of exports and rivalry between the various states for the exports traffic, period between 1791 and 1915, shown. *New York Harbor Case*, 643 (657).

Grain exported through Atlantic ports, years 1913-1916, shown. *Id.* (687).

**FACILITIES.**

The law requires that if shipper demands the use of facilities for handling hogs at any point where the transit rules are applicable, such facilities shall be used without discrimination between shippers. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380 (397).

Evidence fails to show that there is any undue prejudice to any shipper of hogs in the furnishing of facilities by defendants at transit points on their lines. *Id.* (397).

**FACTOR.**

Charges on acetylene gas cylinders, from Speedway, Ind., to Atlanta, Ga., found unreasonable to the extent that charges for the haul from Cincinnati, Ohio, to Atlanta, exceeded the sixth-class rate. Reparation awarded. *Prest-O-Lite Co., Inc., v. C., H. & D. Ry. Co.* 22.

Component from Jacksonville, Fla., to Sanford, Fla., on unprinted wrapping paper from Camas, Wash., and Floriston, Cal., not shown unreasonable. *Crown Willamette Paper Co. v. S. P. Co.* 44.

Components from Floriston, Cal., to Jacksonville, Fla., on unprinted wrapping paper, destined to Sanford, Fla., found unreasonable to the extent that they exceeded 88½ cents per 100 pounds, subsequently established. *Id.* (45).

Defendant's contention that local rates on lumber are entirely without significance in determining relative rates from Nicks Creek and Norma, Tenn., to Cincinnati, Ohio, not sustained. *Southern Lumber & Mfg. Co. v. Tennessee Ry. Co.* 87 (89).

Contention that rates on l. c. l. shipment of blank white paper from Hamilton, Ohio, to Atlanta, Ga., were unreasonable to the extent that the component from Cincinnati to Atlanta exceeded fourth-class rate, not sustained. *Practical Drawing Co. v. C., H. & D. Ry. Co.* 227 (228).

**FLOATAGE. See LIGHTERAGE.****FRACTIONS.**

Fractions in rates shall be disposed of in accordance with rule shown. *Western Trunk Lines Iron and Steel*, 109 (128).

**FREE TIME.**

Brief history of free time on domestic freight at New York since 1898. *New York Harbor Storage*, 141 (142).

Proposed reduction from five to two days in the free time allowed for holding domestic freight at the port of New York, consigned to "New York lighterage," justified. *Id.* (159).

**FREE TIME—Continued.**

The Commission has sanctioned increased demurrage and storage charges and permitted reductions in free time in order to keep freight cars on the move. Export Freight Free Time, 162 (177).

Five days free time on export shipments at the port of New York is about as short as could with justice be made under the most favorable conditions. Id. (178).

In permitting a reduction in free time from 15 to 10 days on export traffic at the port of New York the Commission directed attention to the fact that other north Atlantic ports have always had the same free time allowance regardless of congestion, which relationship should not be changed. Id. (180).

Differences in free time on export traffic at north Atlantic ports and at Gulf ports not found unjustly discriminatory against the Gulf ports. Id. (188, 197).

There should be no different free-time rule applicable at New Orleans than at Mobile. Id. (193).

Any rule as to free time which does not take into account the irregularity of transportation service which the rail carrier is responsible for, is unreasonable. Id. (197).

Proposed reduction from 10 to 5 days in the free time applicable to bunker coal at the ports of New Orleans, Mobile and Pensacola, found justified. Id. (198).

Proposed reduction from 15 to 5 days in the free time allowed on export traffic at the north Atlantic ports, and from 10 to 5 days at Gulf ports, found not justified. Reduction to 10 days at north Atlantic ports, and to 7 days at Gulf ports, found reasonable. Id. (180, 189).

More liberal allowance of free time on shipments consigned to deliveries in Manhattan and Brooklyn than accorded shipments to points in northern New Jersey not found to result in undue prejudice. New York Harbor Case, 643 (728).

**GATEWAY.**

The State of Missouri is a sort of funnel through which pours an immense tonnage of through traffic from the west and southwest. Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co. 287 (310).

**GOVERNMENT OPERATION.**

Special report to Congress. Unification of Railroad Operation, 757.

If railroads are operated by the President an adequate annual return for use of the property, as well as of its upkeep and maintenance during operation, should be guaranteed. Id. (760).

Diversified governmental control is needed if transportation systems are to be "placed and kept on the plane of highest efficiency." Id. (763).

Strong arm of governmental authority is essential if the transportation situation is to be radically improved. Id. (764).

**GROUP RATES.**

Points in transcontinental group G have been placed in group F thus increasing the rates from group G and eliminating the rate situation upon which complainants in group F rely. Complainants do not question the reasonableness of the rate for the future, their purpose being merely to secure reparation. Complaint dismissed. Swift & Co. v. U. P. R. R. Co. 49 (52).

Percentages of the New York-Chicago rates assigned to certain groups in the State of Michigan, found to result in undue prejudice to the lower peninsula of Michigan in favor of Detroit, Mich., and points in Ohio and Indiana. Michigan Percentage Cases, 409 (458).

Blanket or group rates in many cases are of great advantage to the public without serious injustice to any interest, though there is of necessity more or less disregard of distance and varying degrees of inequality. New York Harbor Case, 643 (713).



**GROUPING.**

Record presents no justification that rates should be established to Tuscaloosa on the same basis as to Birmingham by enlarging the Birmingham group to include Tuscaloosa. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (505).

The practice of embracing many points within the same group or zone has been so generally adopted by the carriers and so frequently recognized as proper by the Commission and that its general propriety can hardly be challenged. *New York Harbor Case*, 643 (712).

Whether or not the grouping of points constitutes undue prejudice or unjust discrimination must be determined from the facts in each case. *New York Harbor Case*, 643 (713).

Inclusion of the manufacturing cities of northern New Jersey in the New York rate zone was result of economic conditions, and the request now made that they be lifted out of the New York rate zone and transferred to the Philadelphia zone seems anomalous, and would hardly be an important step in direction of scientific rate construction. *Id.* (713, 735).

**GROUPS.**

Contention by complainant that Bucyrus, Crestline, Galion and Marion, Ohio, in the eastern part of the \$1.95 rate group should not have been omitted from the \$1.85 group which was formed as a result of the Commission's reduction in the coke rate to Toledo, since they are geographically adjacent to the directly intermediate points, included in the \$1.85 group, not sustained. *Galion Iron Works & Mfg. Co. v. B. & O. R. R. Co.* 136 (137, 140).

For the purpose of making rates on apples, points of origin in Arkansas and points of destination in Oklahoma are grouped. *Muskogee Produce Co. v. St. L. & S. F. R. R. Co.* 239.

Map showing the Baltimore, Philadelphia, New York, and Boston rate groups. *New York Harbor Case*, 643 (709).

Actual distances and actual costs are commonly disregarded in the construction of rate groups, and so long as their general propriety is recognized it is of course impossible to entertain the view that a rate is unlawful solely because it does not reflect with approximate accuracy the actual cost of performing the transportation service. *Id.* (712).

The chief justification for a rate zone is that it places all producers on the same footing in a given market. *Id.* (712).

Grouping or blanket arrangements are of great advantage to the public, and, once established, groups should not be lightly or unnecessarily disturbed. *Id.* (713).

**GUARANTY.**

If railroads are operated by the President an adequate annual return for use of the property, as well as of its upkeep and maintenance during operation, should be guaranteed. *Unification of Railroad Operation*, 757 (760).

**HEAVY ARTICLES.**

Proposed increased charges for delivering heavy articles by lighter at New York, N. Y., found justified. *Handling of Heavy Articles*, 323 (334).

**ICING.**

Cars held at terminals are required to be iced constantly at higher charges than are required for transit icing. *Export Freight Free Time* 162 (170).

**IMPORT AND DOMESTIC RATES.**

Upon request, rate on coconut oil from San Francisco, Cal., to Ivorydale, Ohio, was established, but through error made applicable to import oil only. Rate later corrected to apply to domestic shipments and reparation awarded on basis of the rate subsequently established. *Proctor & Gamble Co. v. C. C. & St. L. Ry. Co.* 231.

**"IN ANY RESPECT WHATSOEVER."**

Of section 3 construed. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (319).

**INDUSTRIAL SWITCHING.** *See also* PRIVATE TRACKS; SWITCHING.

Refusal to compensate complainant for spotting cars to or from its plant at Sharon, Pa., during period between decision in *Industrial Railways Case*, 29 I. C. C. 212, and *Car Spotting Charges*, 34 I. C. C., 609, while performing similar service for complainants competitors without an additional charge found to result in undue prejudice to complainant. *Stewart Iron Co. v. P. Co.* 512 (516).

**INSPECTION.**

Inspection is a necessary and valuable commercial adjunct of the marketing of commodities, and the stoppage and necessary detention of shipments for the purpose is a reasonable and proper service, but the Commission does not hold that carriers must perform this service without adequate compensation. *Reconsignment Case*, 590 (641).

**INVESTIGATION.**

Investigation in accordance with Senate resolution. *Charleston & Norfolk S. S. Co.* 365.

**INVESTMENT.**

Carriers have a right to demand and it is the duty of the Commission to approve, just and reasonable rates sufficient to yield fair returns upon the value of the property devoted to public use after necessary expenditures for wages, fuel, and supplies. *Unification of Railroad Operation*, 757 (759).

**ISSUES.**

Issues should be clearly stated and definitely determined not later than the opening of the hearing. *New York Harbor Case*, 643 (647).

Due recognition to the long-established practices of the carriers throughout the country must be given in determining the issues presented in a case of this character. *Id.* (735).

**JOINT RATES.**

Establishment of joint through rates from Cleveland-Detroit territory in lieu of existing combination rates, not warranted. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (484).

When joint rates and divisions are established voluntarily one carrier can exact no more than its connections will allow. *Switching Absorptions*, 583 (586).

**JUNCTION POINT RATES.**

Contention that combination rates on Lowville, N. Y., on all traffic between points on the L. & B. R. R. R. and points on the N. Y. C. R. R. should not exceed rates to or from Lowville, the point of junction of the two lines, not sustained. Complaint dismissed. *Lewis Co. v. L. & B. R. R. R. Co.* 79.

Through routes and joint rates required to be established on coke, from points on the Interstate R. R. to points in Alabama, Florida and other states, not in excess of junction point rates applicable from Appalachia, Blackwood, Josephine and Norton, Va. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 282 (284).

**JUNCTION POINTS.**

No operating rule is reasonable or lawful which requires holding of traffic in cars for an indefinite period at junction points. *Omaha Grain Exchange v. G. N. Ry. Co.* 532 (538).

**JURISDICTION.**

Matter of allowance or adjustment of freight charges between the parties lies outside the scope of the jurisdiction of the the Commission. *Lafayette Chamber of Commerce v. A. & V. Ry. Co.* 246 (248).

Commission's jurisdiction restricted to common carriers. *Charleston & Norfolk S. S. Co.* 365 (367).

**JURISDICTION—Continued.**

Charleston & Norfolk S. S. Co. found not to be a common carrier within meaning of Panama Canal act, therefore the Commission is without jurisdiction to prescribe proportional rail rates from Ohio River crossings to Norfolk in connection with proposed boat line. *Id.* (368, 371).

If some readjustment of rates is not made, the matter may be brought to the attention of the Commission in a supplemental proceeding and jurisdiction is retained for that purpose. *California Pine Box & Lumber Co. v. S. P. Co.* 372 (379).

**LEGAL RATE.**

Contention that double carload rate assessed on that part of a shipment of lumber from Carryville, Ark., to Cairo, Ill., in excess of 110 per cent of marked capacity of car was unreasonable to the extent it exceeded carload rate or charges accruing had shipment moved in two cars, not sustained. *McFarland Lumber Co. v. St. L. S. W. Ry. Co.* 225 (226).

Charges on lumber from Platanus, Mo., to Cairo, Ill., found unreasonable to the extent it exceeded rate formerly in effect and subsequently reestablished. Reparation awarded. *McFarland Lumber Co. v. B. C. R. R. Co.* 471.

Double first-class rating assessed on 12 pieces of blower pipe shipped in connection with an ensilage cutter on which third-class rating was applied, found legally applicable and not shown to be unreasonable. *Wausau Southern Lumber Co. v. G. & S. I. R. R. Co.* 507 (508).

**LIGHTERAGE.**

Car floats carry loaded cars and lighters carry freight which has been unloaded. Export Freight Free Time, 162 (165).

Proposed increased charges for delivering heavy articles by lighter at New York, N. Y., found justified. *Handling of Heavy Articles*, 323 (334).

New York is the only port in the world where a very large volume of freight is lightered or floated between trunk line terminals on one side of the harbor and ships and factories on the other side. *New York Harbor Case*, 643 (652).

Description of lighterage and floatage service on both domestic and export traffic. *Id.* (670).

Cost of lighterage service on traffic to Manhattan compared with cost of switching to and from industries and piers on the Jersey side. *Id.* (676, 680).

Defendants' failure to recognize the additional cost of lighterage and floatage service in constructing rates to and from Manhattan and Brooklyn, and to give northern New Jersey cities the Philadelphia basis of rates, not found to result in undue prejudice to New Jersey cities to the advantage of Manhattan and Brooklyn. *Id.* (738).

**LIGHTERAGE LIMITS.**

At the port of New York indicated by map (facing page 650) and in detail (page 671). *New York Harbor Case*, 643.

**LIGHTERS.**

Description of lighters used for heavy articles. *Handling of Heavy Articles*, 323 (327).

**LIMITATION OF ACTION.**

An assignment to complainant of consignor's claim for reparation was executed more than two years after the date of delivery. Claims covering barred. *Standard Roofing Co. v. M., K. & T. Ry. Co.* 212 (213).

Whether defendant was delinquent in not including all shipments in special docket application or complainants culpable in not promptly handling their own claims, can not affect the fact that under the law the Commission has no jurisdiction in respect to claims barred by the statute of limitations. *California Pine Box & Lumber Co. v. S. P. Co.* 372 (375).

**LINE HAUL.**

On shipment of corn from Green Valley, Minn., to Kansas City, Mo., routing instructions were given "G. N., C., B. & Q., care S. F. at Kansas City". The shipment was unloaded at an elevator on the Burlington tracks, and complainant contended that lower rate in effect which named Kansas City as a point of destination on the Santa Fe was applicable. Contention not sustained, as tariff contemplated a line haul by S. F. in connection with G. N. and C., B. & Q. *Flanley Grain Co. v. G. N. Ry. Co.* 74.

**LIVE STOCK.**

Transportation of live stock does not terminate until after the stock has been unloaded by the carrier into suitable pens, and it is carrier's duty to provide such facilities. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (318).

**LOADING.**

Box shook: Average loading of box shook and box material is around 40,000 pounds per car. *California Pine Box & Lumber Co. v. S. P. Co.* 372 (376).

Iron and steel articles: Car loading of, shown by records of five important western lines for the years 1914, 1915, and 1916. *Western Trunk Lines Iron and Steel*, 109 (116).

Lumber: Contention that double carload rate assessed on that part of a shipment of lumber from Carryville, Ark., to Cairo, Ill., in excess of 110 per cent of marked capacity of car was unreasonable to the extent it exceeded carload rate or charges accruing had shipment moved in two cars, not sustained. *McFarland Lumber Co. v. St. L. S. W. Ry. Co.* 225 (226).

Packing-house products: Minimum weight of 30,000 pounds on packing-house products in mixed carloads from transcontinental group F points to California terminals is not too high in so far as the physical loading is concerned. *Swift & Co. v. U. P. R. R. Co.* 49 (51).

**LOADING AND UNLOADING.**

Proposed charge of local tariff rates for reforwarding to a point within the switching limits cars which have been placed for unloading but have not been unloaded found justified. *Reconsignment Case*, 590 (626).

**LOANS.**

If unification of the railroads is to be effected by the carriers it should be effected in a lawful way, with financial assistance from the Government treasury. *Unification of Railroad Operation*, 757 (760).

**LOCATION, See POINTS-OFF-LINE.****LONG AND SHORT HAUL.**

In general:

Contention that the fourth section would have to be changed to read "kinds" instead of "kind" of property in order for the combination wheat and flour rate between given points to constitute a violation of the long and short haul rule, as compared with lower through wheat rate to more distant point, places a strained construction of the act. *Royal Milling Co. v. G. N. Ry. Co.* 263 (270).

In determining whether a departure from fourth section exists like rates should be compared with one another, and the mere fact that a local rate to an intermediate point is higher than the proportional rate to a more distant point does not of itself constitute a departure from the fourth section. *Id.* (269-270).

Rates on any commodity to or from any intermediate point shall not exceed the rate on the same commodity to or from the next more distant point to or from which a lower rate is charged by a greater amount than the rate to or from the intermediate point on the class to which the commodity

## LONG AND SHORT HAUL—Continued.

## In general—Continued.

belongs exceeds the rate on the corresponding class to or from the more distant point. Rates Between C. F. A. Territory and Points on the C. & O. Ry. 576 (580).

In granting relief from the fourth section the present rates to and from the intermediate points shall not be increased except as may hereafter be authorized by some order of this Commission, and shall in no instance exceed the lowest combination. Id. (580).

Relief from the fourth section should not be granted for the purpose of permitting extremely circuitous routes to compete with the direct lines. Id. (581).

Arkansas points: Authority to maintain rates on clean rice and products, via all-rail and rail-and-water, from points in Arkansas, to points in trunk line, New England freight association, C. F. A., western trunk line territories, and Oklahoma, lower than rates to intermediate points, denied. *Arkansas Rice Shippers Traffic Bureau v. A. A. R. R. Co.* 566 (575).

Birmingham, Ala.: Authority to continue rates on live stock from Tennessee and Kentucky points to Birmingham and other Alabama points, lower than rates contemporaneously in effect to and from intermediate points, denied. *Alabama Packing Co. v. L. & N. R. R. Co.* 524 (531).

Chesapeake & Ohio points: Fourth section relief granted the C. & O. Ry. and connections to continue lower rates between C. F. A. territory and Ashland and Louisville, Ky., than are in effect on like traffic to and from intermediate points in the Lexington district between Ashland and Louisville. Rates between C. F. A. Territory and Points on the C. & O. Ry. 576 (580).

Chester, Va.: Authority to continue rates on lumber from Chester, Va., to points in Ohio, Michigan and Pennsylvania, higher than from Richmond and Petersburg over routes by which Chester is intermediate, denied. *Conquest & Son v. S. A. L. Ry.* 517 (522).

Great Falls, Mont.: Charges on shipment of wheat from Montana points, milled at Great Falls and destined to points in North Dakota intermediate to eastern terminals higher than on similar shipments from same points of origin to the eastern terminals results in fourth section departures, which should be corrected. *Royal Milling Co. v. G. N. Ry. Co.* 263 (269,271).

Kansas points: Authority to continue rates on petroleum oil and its products, from southeastern Kansas to points in Oklahoma, lower than rates contemporaneously maintained from and to intermediate points, denied. *National Petroleum Asso. v. M., K. & T. Ry. Co.* 355 (364).

Manley and Hills, Minn.: As these points were not included in the modification of the rules governing the fares of caretakers of live stock from South Dakota points to St. Paul, Minn., unlawful departures from the long and short haul were created. *Sioux City Live Stock Exchange v. O., St. P., M. & O. Ry. Co.* 279 (281).

Maylene, Ala.: Authority to continue rate on lumber from Maplesville, Ala., to Chattanooga, Tenn., lower than that in effect from Maylene and other intermediate points, denied. *Advance Lumber Co. v. S. Ry. Co.* 237 (238).

St. Paul, Minn.: Authority to publish commodity rates from Chicago and points grouped therewith to St. Paul, Duluth, and points taking the same rates on traffic from Lake Erie ports and to charge fifth-class rates at intermediate points, denied. *Western Trunk Lines Iron and Steel*, 109 (113).

Tuscaloosa, Ala.: Rates on green coffee from New Orleans, La., to Tuscaloosa, Ala., higher than to Birmingham, a more distant point, results in unauthorized fourth section departures, which should be corrected. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (497).

**LONG AND SHORT HAUL—Continued.**

Virginia cities: Rates on pine lumber from Franklin and Butterworth, Va., points immediately south of Virginia cities, to Pittsburgh and points taking same rates, lower than rates from the Virginia cities results in fourth section departures and should be removed promptly. *North Carolina Pine Asso. v. N. & W. Ry. Co.* 460 (466).

Wilmington and Philadelphia: Rates on lumber from points in Accomac and Northampton counties, found unreasonable as compared with rate applicable from Norfolk Va. Fourth section application seeking authority to continue lower rates, denied: *Coulbourn v. N. Y., P. & N. R. R. Co.* 54 (57).

**LONG HAUL.**

Practice of carriers throughout the country to apply the same rates on long distance traffic to and from points located on opposite sides of a river or harbor, regardless of the nature of the facilities employed in transferring the freight between them, shown. *New York Harbor Case*, 643 (714).

**LOSS AND DAMAGE.**

Claims on live-stock traffic are comparatively heavy. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (299).

**"MANIFEST" OR "SYMBOL" TRAINS.**

Packing-house products, fresh meats, etc., move from inland points to New York in "manifest" or "symbol" trains which move faster than ordinary freight trains. *Export Freight Free Time*, 162 (172).

**MANUFACTURED ARTICLES.**

Stoves and related articles are highly manufactured products, of comparatively light loading, and more liable to damage than other iron and steel articles. *Western Trunk Lines Iron and Steel*, 109 (112).

Table showing the value of products manufactured annually in northern New Jersey, population and wage earners. *New York Harbor Case*, 643 (668).

**MAP.**

Showing Ohio grouping with respect to rates on coke from the Connellsville and Fairmont regions. *Galion Iron Works & Mfg. Co. v. B. & O. R. R. Co.* 136 (137).

Showing percentage groups in C. F. A. territory. *Michigan Percentage Cases*, 409 (Facing page 421).

Outline map showing lines serving Tuscaloosa, Selma, Montgomery, and Birmingham, Ala. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (Facing page 484).

Of New York Harbor showing lighterage limits and the various terminals. *New York Harbor Case*, 643 (Facing page 650).

Showing the Baltimore, Philadelphia, New York, and Boston rate groups. *Id.* (709).

Showing northern New Jersey considered as part of the port of New York, Appendix E. *Id.* (744).

**MARGINAL RAILROAD.**

Plan for the construction of a marginal railroad in Brooklyn to be municipally owned and operated and to supply the whole section with an adequate freight service is worthy of note. *New York Harbor Case*, 643 (664).

**MARKET COMPETITION. See COMPETITION (MARKET).****MARKETS.**

On account of better marketing facilities about 60 per cent of the lumber shipped from Norfolk to Wilmington and Philadelphia moves all rail. *Coulbourn v. N. Y., P. & N. R. R. Co.* 54 (56).

Principal markets for New England granite are roughly defined as north of North Carolina, east of the Rocky Mountains and south of Canada. *Official Classification No. 44*, 91 (97).

Open markets defined to be points centrally located to which animals are shipped from surrounding territory for inspection and sale on competitive bids. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380 (382).



**MEASURE OF RATES.**

Formula of percentage rates in C. F. A. territory can not be accepted by the Commission as a measure of the reasonableness of rates in this territory, or as a criterion to be used in determining their lawfulness in other respects. *Michigan Percentage Cases*, 409 (425).

Such factors as density of population and comparisons of traffic and commercial conditions are not infrequently the best available tests of the reasonableness of rates. *Coal to South Dakota*, 750 (752).

**MEXICO.**

Rate on iron pipe, pipe fittings, and boiler tubes in carloads from New York, N. Y., to Eagle Pass, Tex., destined to certain points in Mexico, but not immediately shipped on account of embargo, found legally applicable. *Eagle Pass Lumber Co. v. G., H. & S. A. Ry. Co.* 219.

**MILEAGE.**

Operated by railroads with terminals at New York harbor, Appendix A. *New York Harbor Case*, 643 (740).

**MILEAGE RATES.**

Proportional mileage rates prescribed on coal from Rapid City and Miles City to all points in South Dakota in connection with rates from Sheridan, Kirby, Hudson, and Glenrock, Wyo. *Coal to South Dakota*, 750 (755, 756).

**MINIMUM CHARGE.**

Carriers' schedules may provide for a minimum charge of \$5 on shipments of uncrated live stock, l. c. l., in official and southern classification territories. *Live Stock Classification*, 335 (343).

**MINIMUM WEIGHT.**

Canned goods: Proposed increased minimum weight on, from interior California points to San Francisco, Cal., for transportation by water to Portland and Astoria, Oreg., found justified in part. *Canned Goods from San Francisco, Cal.*, 285 (286).

Hogs: Fact that hogs to open markets must be loaded to minimum weight at origin or charges paid based thereon while no such requirement is made on shipments to transit points, constitutes no undue prejudice against open markets. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380 (387, 399).

Live stock: Finding in 40 I. C. C., 347, respecting minimum weights in official and southern classification territories, found to result in less than reasonable charges, modified in so far as it pertains to minimum weights on l. c. l. live stock and to standard or basic values on ordinary live stock. *Live Stock Classification*, 335 (342).

Packing-house products: Minimum weight of 30,000 pounds on packing-house products in mixed carloads from transcontinental group F points to California terminals, not found unreasonable. Complaint dismissed. *Swift & Co. v. U. P. R. R. Co.* 49 (51).

Stone: Proposed increased minimum weight and change in ratings on natural stone in Official classification territory, justified. *Official Classification No. 44*, 91 (98, 99).

**MISBILLING.**

Evidence insufficient to determine rate unreasonable on cotton linters, billed as cotton factory sweepings from Philadelphia, Pa., to Hopewell, Va. *Du Pont de Nemours Powder Co. v. P. R. R. Co.* 224.

**MISQUOTATION OF RATES.**

Carrier's agent quoted commodity rate applicable on flaxseed from Mott, N. Dak., to Minneapolis, Minn., as being applicable to flaxseed and timothy seed in mixed carloads between same points. Rates applicable not shown to have been unreasonable, but charges collected were illegal. Reparation awarded. *Dewey v. O., M. & St. P. Ry. Co.* 32.

**MISROUTING.**

Determination of question of misrouting on shipment of saw logs moving over an interstate route between two points in the same state at joint rate lower than combination rate over an intrastate route, unnecessary. Complaint dismissed.

Peshtigo Lumber Co. v. W. N. Ry. Co. 6 (7).

Carload of sash and doors from Wausau, Wis., to Girardville, Pa., was routed "Ann Arbor and Traders Despatch," with no delivery instructions, although Lehigh Valley delivery was desired. Carrier's agent inserted "P & R delivery" in bill of lading. Under tariffs Traders Despatch was shown as operating into Girardville by way of P & R affording either P & R or LV delivery. *Held*, Rate specified applied over the route of movement and shipment not misrouting. Curtis & Yale Co. v. C. & N. W. Ry. Co. 12.

Alleged misrouting on carload of nut coal from Scammon, Kans., to Abilene, Kans., moving interstate, on the basis of lower rate in effect via intrastate route, not sustained. Complaint dismissed. Kruger Lumber Co. v. St. L. & S. F. R. R. Co. 52.

Reparation awarded on lumber from Eagle Gorge, Wash., to Gordon, Nebr., routed "N. P. to transfer % C. & N. W." No rate inserted in bill of lading, found to have been misrouted, as N. P. should have delivered shipment to C. & N. W. at Oakes, N. Dak. Pacific Coast Shippers Asso. v. N. P. Ry. Co. 57.

On shipment of bridge builders' outfit from Kenova, W. Va., to Greenville Piers, N. J., bill of lading specified Greenville "for free lighterage." Greenville is an inland point. *Held*, to have been misrouted as notation "for free lighterage" was sufficient to put carrier on notice. Reparation awarded. American Bridge Co. v. N. & W. Ry. Co. 235 (236).

Former finding that certain unrouted carload shipments of bulk corn between points in Minnesota were misrouted by having been transported over a higher rated interstate route, while a lower rated intrastate route was available, reversed on reargument. McCaull-Dinsmore Co. v. G. N. Ry. Co. 581.

**MIXED CARLOADS.**

Higher rates on mixed carload shipments of live stock and poultry feed than on grain products, found unreasonable. Reparation awarded. Blatchford Calf Meal Factory v. E., J. & E. Ry. Co. 10.

Packing-house products from transcontinental group F points to California terminals, not found unreasonable. Complaint dismissed. Swift & Co. v. U. P. R. R. Co. 49.

Proposed application of fifth-class rates in lieu of commodity rates on mixtures of iron and steel articles, greatly restricting such mixtures, not justified. Western Trunk Lines Iron and Steel, 109 (128, 129).

If rules proposed by respondents for determining charges on mixed carloads of ordinary and "other than ordinary" live stock in official and southern classification territories, results in reduction in charges these rules may be embodied in tariffs subject to any action deemed proper by the Commission in the future. Live Stock Classification, 335 (343).

**NESTED.**

The term "nested" used in the package specifications in official and western classifications, described. Matthews & Bro. v. C. & E. I. R. R. Co. 36 (37).

Third-class rating assessed on l. c. l. shipments of springs made of  $\frac{1}{8}$  and  $\frac{1}{4}$  inch material and packed one within the other, in barrels, not found unreasonable or unjustly discriminatory as compared with Rule 26, providing for rating of 20% less than 3rd class on springs made of material  $\frac{1}{4}$  inch or over in thickness, as charges were properly collected on basis of the highest rated article in the package. Temco Electric Motor Co. v. B. & O. R. R. Co. 76 (77).

**NEW YORK CENTRAL RAILROAD.**

Fully described as to equipment, facilities, and entrance into New York. New York Harbor Case, 643 (687-692).

**NEW YORK-CHICAGO.**

First through rail line opened in 1852 and competition between water and rail routes soon became keen. *New York Harbor Case*, 643 (659).

**NEW YORK HARBOR.**

Description of. *New York Harbor Case*, 643 (650).

**NEW YORK RATE GROUP.**

Described. *Handling of Heavy Articles*, 323.

**NOTICE OF ARRIVAL.** *See ERROR.***OPERATION.**

There is no institution in which regularity of operation is more requisite than in transportation. *Unification of Railroad Operation*, 757 (763).

**OUT OF LINE HAUL.**

Proposed cancellation of waiver of back-haul or out of route charges on grain milled in transit at certain stations in Michigan and consigned to Bryan and Toledo, Ohio, and points south and east thereof, found justified. *Grain Transit at Michigan Stations*, 104 (108).

**OVERCHARGES.**

Charges collected on mixed carload of timothy seed and flaxseed from Mott, N. Dak., to Minneapolis, Minn., exceeded the rate lawfully applicable. *Reparation awarded*. *Dewey v. C., M. & St. P. Ry. Co.* 32.

Refund of charges collected on basis of illegal rate and erroneous weight, authorized. *Minnesota & Ontario Power Co. v. B. F. & I. F. Ry. Co.* 208 (209).

Refund of charges assessed on brick, from Chanute, Kans., to Jefferson City, Mo., in excess of legal rates, authorized. *Kansas Buff Brick & Mfg. Co. v. M., K. & T. Ry. Co.* 217 (218).

Refund of charges on old cheese cloth, from Windsor Locks, Conn., to Quincy, Fla., in excess of rates legally applicable, authorized. *American Sumatra Tobacco Co. v. N. Y., N. H. & H. R. R. Co.* 243 (245).

Overcharge included in award of reparation. *Lafayette Chamber of Commerce v. A. & V. Ry. Co.* 246.

Shipments of talc, from New York, N. Y., to Concord, N. C., based on minimum weight of 36,000 pounds, found to have been overcharged to the extent they exceeded charges based on minimum weight of 24,000 pounds. *Kerr Bleaching & Finishing Works v. O. D. S. S. Co.* 472.

**PACKING.**

Third-class rating assessed on l. c. l. shipments of springs made of  $\frac{1}{8}$  and  $\frac{1}{4}$  inch material and packed one within the other, in barrels, not found unreasonable or unjustly discriminatory as compared with Rule 26, providing for rating of 20% less than 3rd class on springs made of material  $\frac{1}{4}$  inch or over in thickness, as charges were properly collected on basis of the highest rated article in the package. *Temco Electric Motor Co. v. B. & O. R. R. Co.* 76 (77).

**PACKING-HOUSE PRODUCTS.**

Carriers in western classification territory have prescribed a uniform list of packing-house products in mixed carloads. *Swift & Co. v. U. P. R. R. Co.* 49 (50).

**PANAMA CANAL ACT.**

*Charleston & Norfolk S. S. Co.* not found to be a common carrier within meaning of. *Charleston & Norfolk S. S. Co.* 365 (368).

**PAPER RATES.**

Carriers will be expected to correct a fourth section departure occurring in connection with a route not used by carriers but which is available under the joint tariff. *Galion Iron Works & Mfg. Co. v. B. & O. R. R. Co.* 136 (140).

Rates in effect via routes over which traffic seldom or never moves are known as paper rates and increases in such rates are paper increases. *Alabama Packing Co. v. L. & N. R. R. Co.* 524 (526, 528).

**PARITY OF RATES.**

Record presents no justification that rates should be established to Tuscaloosa on the same basis as to Birmingham by enlarging the Birmingham group to include Tuscaloosa. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (505).

**PARTIES.**

Complainant (consignee) bought certain shipments of blackstrap molasses f. o. b. point of origin. Consignor guaranteed rate not to exceed 21 cents, and deducted this amount from the invoice. Complainant's claim for reparation on basis of subsequently established rate of 15 cents, denied. *Rapier Sugar Feed Co. v. L. & N. R. R. Co.* 222.

Matter of allowances or adjustment of freight charges between the parties lies outside the scope of the jurisdiction of the Commission. *Lafayette Chamber of Commerce v. A. & V. Ry. Co.* 246 (248).

**PARTS.**

The record affords no basis for establishing different rates on transplanter, according as barrels or tanks are or are not attached. *Mitchell, Lewis & Staver Co. v. C. & N. W. Ry. Co.* 71.

Double first-class rating assessed on 12 pieces of blower pipe shipped in connection with an ensilage cutter on which 3d-class rating was applied, found legally applicable and not shown to be unreasonable. *Wausau Southern Lumber Co. v. G. & S. I. R. R. Co.* 507 (508).

**PAST RATES.**

Rate assailed has been in effect for 18 years or more. *Swift & Co. v. U. P. R. R. Co.* 49 (52).

**PENALTY.**

Storage charges at the port of New York, penal in nature, are to prevent the storage of warehouse freight for extended periods after the expiration of free time. *New York Harbor Storage*, 141 (148).

**PENS.**

The duty to unload live stock into suitable pens includes the duty to provide such facilities and the means of reaching them, or else to hire those owned by others. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (318).

**PERCENTAGE RATES.**

Formula of percentage rates in C. F. A. territory can not be accepted by the Commission as a measure of the reasonableness of rates in this territory or as a criterion to be used in determining their lawfulness in other respects. *Michigan Percentage Cases*, 409 (425).

Percentages of the New York-Chicago rates assigned to certain groups in the State of Michigan, found to result in undue prejudice to the lower peninsula of Michigan in favor of Detroit, Mich., and points in Ohio and Indiana. *Id.* (458).

**PLACEMENT. See LOADING AND UNLOADING.****PLEADING AND PRACTICE.**

Hearsay evidence objected to. Commission not prepared to require a strict adherence to the rules of evidence in its proceedings. *Western Trunk Lines Iron and Steel*, 109 (122).

If undue discrimination results against Omaha in favor of other open markets it can not be corrected by an order in this proceeding, as that issue is not included in the pleading. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380 (393).

The Commission can not allow a disregard of the rule providing for the time and manner in which exceptions to its examiners' proposed reports may be filed. *Fidelity Cotton Oil Co. v. A. & V. Ry. Co.* 542 (543).

**POINTS OFF LINE.**

The proximity of a point to or its remoteness from the lines of the Pennsylvania System can not properly be accepted by the Commission as a criterion to be used in determining the reasonableness or the propriety of the rates to and from that point. *Michigan Percentage Cases*, 409 (427).

**POOLING.** See **ANTITRUST LAWS.**

**PORTS.**

Water front at the port of New York compared with water front at various other large ports on the Atlantic, Gulf, and Pacific coasts. *New York Harbor Storage*, 643 (656).

Development of the ports of New York and New Jersey. *Id.* (665-669).

Similarity of conditions at the port of New York and at San Francisco, shown. *Id.* (715).

**POTENTIAL COMPETITION.** See **COMPETITION (POTENTIAL).**

**POWER OF COMMISSION.** See also **DELEGATION OF AUTHORITY.**

Commission has no authority to require the publication of a joint tariff providing for application of the line-haul rate on all traffic to and from all Minneapolis industries. *Switching Absorptions*, 583 (588).

Contended that following *I. C. C. v. Stickney*, 215 U. S., 98, the Commission has no right to consider that reconsignment in coal traffic is covered by the freight rates, *Held*, That decision not regarded as restricting the Commission's power of investigation of proposed rules, under section 15, or as affecting the burden of proof. *Reconsignment Case*, 590 (630).

Authority to regulate rates was not delegated to the Commission for the purpose of making a finding that would induce carriers to unite their efforts toward bettering terminal conditions. *New York Harbor Case*, 643 (733).

**PREFERENCES AND PREJUDICES.**

In general:

Rates on bulk corn from Green Valley and Cottonwood, Minn., to Kansas City, Mo., not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial, due to the fact that shipment was not delivered to Santa Fe at Kansas City conformably to reconsigning order. Complaint dismissed. *Flanley Grain Co. v. G. N. Ry. Co.* 74.

It is evident that to distribute cars by rotation when the elevators of only one shipper are filled gives an undue preference to his competitors. *Farmers' Elevator Co. v. C., M. & St. P. Ry. Co.* 475 (480).

There is no allegation that the refusal of G. N. Ry. to permit its cars to go beyond its line resulted in unjust discrimination against Omaha as a grain market or in undue prejudice to shippers at South Dakota points. *Omaha Grain Exchange v. G. N. Ry. Co.* 532 (536).

Articles:

Blankets, horse: First class rating in official classification territory, not shown to be unduly prejudicial as compared with cotton blankets rated 15% less than second-class. Complaint dismissed. *Wallace-Smith & Co. v. B. & M. R. R.* 62.

Stone: Rate on stone, rough, sawed four sides or less, from points in the Bedford district to Omaha, found unduly prejudicial to the extent that it is not 2 cents less than rate on dressed, planed, or sawed stone. *Schall Co. v. B. & O. S. W. R. R. Co.* 254 (258).

Tile, gypsum: Rates on, from Grand Rapids, Mich., to points on and east of the Mississippi and Ohio rivers as far east as the eastern boundary of C. F. A. territory, found unduly preferential as compared with rates on clay tile. *Acme Cement Plaster Co. v. A., C. & Y. Ry. Co.* 1 (5).

## PREFERENCES AND PREJUDICES—Continued.

## Localities:

- Arkansas points:** Rates on clean rice and products from milling points in Arkansas to New England freight association, trunk line, C. F. A., and western trunk line territories, and Oklahoma, higher than from Louisiana, Texas, New Orleans, and Memphis, found not to unduly prefer Louisiana shippers, except where rates exceed the aggregate of intermediates. *Arkansas Rice Shippers Traffic Bureau v. A. A. R. R. Co.* 566 (573, 575).
- Atlantic and Gulf ports:** Shorter period of free time on export shipments at Gulf ports than at Atlantic ports not found to result in undue prejudice to the Gulf ports. *Export Freight Free Time*, 162 (188, 197).
- Beaver Falls, N. Y.:** Rates on all materials between points on the L. & B. R. R. R. and points on the N. Y. C. R. R. made by combination on Lowville, N. Y., not found unreasonable or unduly prejudicial as compared with rates to or from Lowville, the point of junction between the two lines. Complaint dismissed. *Lewis Co. v. L. & B. R. R. Co.* 79 (81).
- Bucyrus, Ohio:** Rates on coke from the Connellsville and Fairmont regions to Bucyrus, Crestline, Galion, and Marion, Ohio, in the eastern part of the \$1.95 rate group, found not unreasonable or unduly preferential of points in the \$1.85 and \$1.65 rate groups. Complaint dismissed. *Galion Iron Works & Mfg. Co. v. B. & O. R. R. Co.* 136 (140).
- Chanute, Kans.:** Rates on brick, from Chanute, Kans., to Jefferson City, Mo., not found unduly prejudicial as compared with rates to St. Louis, Mo. *Kansas Buff Brick & Mfg. Co. v. M., K. & T. Ry. Co.* 217 (218).
- Chicago, Ill., etc.:** Transit rules and regulations respecting shipments of hogs at points in Wisconsin, Illinois, Iowa, and Minnesota, not found unduly prejudicial to complainants and the public live-stock markets at Chicago, Denver, and other points. Complaint dismissed. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380 (402).
- Cincinnati, Ohio:** Rates on lumber, from Nick's Creek, Tenn., to Cincinnati, Ohio, found unduly prejudicial to the extent that they exceeded by more than 1 cent per 100 pounds the rate maintained from Norma, Tenn. *Southern Lumber & Mfg. Co. v. Tennessee Ry. Co.* 87 (90).
- Coffeyville, Kans.:** Rates on egg-case fillers, to Gentry, Ark., reduced and rates from Kansas City territory increased, removing any undue prejudice that may have existed. Complaint dismissed. *Creamery Package Mfg. Co. v. K. C. S. Ry. Co.* 84.
- Colorado common points:** Rates on coal tar in barrels or tank cars between Utah common points and Colorado common points and rate on coal-tar pitch in barrels from Utah common points to Colorado common points, not found unduly prejudicial as compared with lower rate formerly in effect. *Barrett Mfg. Co. v. A., T. & S. F. Ry. Co.* 27.
- Concord, N. C.:** Rating of 6th class on talc, from New York, N. Y., to Concord, N. C., found unduly prejudicial to the extent it exceeded commodity rate applicable to Greenville, S. C. Reparation awarded. *Kerr Bleaching & Finishing Works v. O. D. S. S. Co.* 472.
- East St. Louis, Ill.:** Different rule governing the return transportation of caretakers in connection with intrastate rates on live stock to St. Louis than with the interstate rates to East St. Louis and National Stock Yards found to subject East St. Louis and National Stock Yards to undue prejudice. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (295, 321).



## PREFERENCES AND PREJUDICES—Continued.

## Localities—Continued.

- East St. Louis, Ill.: Relation of interstate rates on live stock to East St. Louis and National Stock Yards, and the intrastate rates to St. Louis, found to subject East St. Louis and National Stock Yards to undue prejudice in favor of St. Louis. *Id.* (321).
- Great Falls, Mont.: Maintenance of milling-in-transit charge of 2 cents per 100 pounds, at Great Falls, Mont., on wheat from and to points on defendant's line, while no charge is made on wheat milled at Minneapolis and other eastern terminals, found to result in undue prejudice to complainants, for which defendant alone can not be held responsible. *Royal Milling Co. v. G. N. Ry. Co.* 263 (265, 271).
- Houston, Tex.: Rates on shelled or unshelled peanuts, from Houston, Tex., to St. Louis, Mo., Chicago, Ill., and other points, not found unduly prejudicial as compared with rates from Norfolk, Va., and other Virginia cities. *Fidelity Cotton Oil Co. v. A. & V. Ry. Co.* 542 (548).
- Jacksonville, Fla.: Rate on unprinted wrapping paper, from Jacksonville, Fla., to Sanford, Fla., originating at western points, not found unreasonable or unduly prejudicial as compared with local rate to Palatka, Fla. *Crown Willamette Paper Co. v. S. P. Co.* 44 (47).
- Memphis, Tenn.: Rates on blackstrap molasses in tank cars from Key West to Memphis, Tenn., found unduly prejudicial to the extent they exceeded the rates from New Orleans to Memphis by more than the amounts by which the rates from Key West to Cairo and St. Louis respectively exceed rates from New Orleans to same points. *Memphis Merchants Exchange v. F. E. C. Ry. Co.* 251 (253).
- Michigan groups: Percentages of the New York-Chicago rates assigned to certain groups in the state of Michigan, found to result in undue prejudice to the Lower Peninsula of Michigan in favor of Detroit, Mich., and points in Ohio and Indiana. *Michigan Percentage Cases*, 409 (458).
- Muskogee, Okla.: Rates on apples, from points in Arkansas to Muskogee, Okla., found unduly prejudicial to the extent that they exceed by more than 5 cents the rates to Fort Smith, Ark. *Muskogee Produce Co. v. St. L. & S. F. R. R. Co.* 239 (242).
- New Jersey points: Contention that the failure to uniformly place freight from New Jersey in fast freight manifest trains, causing additional expense by trucking freight to Manhattan to make sure of this service, results in undue prejudice to the northern New Jersey shippers, not sustained. *New York Harbor Case*, 643 (729).
- New York, N. Y.: More liberal allowance of free time on shipments consigned to deliveries in Manhattan and Brooklyn than accorded shipments to points in northern New Jersey not found to result in undue prejudice. *New York Harbor Case*, 643 (728).
- New York, N. Y.: There is merit to contention that the metropolitan district should be regarded as a unit, and that lower rates to and from northern New Jersey would subject New York to undue prejudice. *Id.* (737).
- New York, N. Y.: Defendants' failure to recognize the additional cost of lighterage and floatage service in constructing rates to and from Manhattan and Brooklyn, and to give to the northern New Jersey cities the Philadelphia basis of rates, not found to result in undue prejudice to New Jersey cities to the advantage of Manhattan and Brooklyn. *Id.* (738).
- Owensboro, Ky.: Rates on lumber from Owensboro, Ky., to New York and Brooklyn, N. Y., and Philadelphia, Pa., not found unduly prejudicial as compared with rates from Evansville, Ind. *Stimson v. L., H. & St. L. Ry. Co.* 508 (511).

**PREFERENCES AND PREJUDICES—Continued.****Localities—Continued.**

St. Paul, Minn.: If rates to St. Paul are increased, the rates from Chicago and Milwaukee to Winona and from Chicago and La Crosse must be correspondingly increased in order to prevent undue prejudice to St. Paul. *Western Trunk Lines Iron and Steel*, 109 (129).

Sheboygan Falls, Wis.: Rates from Sheboygan Falls to St. Louis, Mo., not shown unduly prejudicial as compared with rates from Sheboygan, Wis. *Weisse & Co. v. C. & N. W. Ry. Co.* 16.

Sioux City, Iowa: Upon rehearing, rules governing fares of caretakers of live stock to and from Sioux City, Iowa, from points in southwestern Minnesota, found unduly prejudicial in so far as they differ from those in effect to and from St. Paul on live stock to South St. Paul. *Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co.* 279 (281).

Sioux City, Iowa: Rates on lumber and other forest products, other than yellow pine from points in Missouri, Texas, and other states to Sioux City, found unduly prejudicial to the extent they exceeded by more than 2 cents the rates contemporaneously maintained to Omaha. *Traffic Bureau of Sioux City Commercial Club v. A. & W. Ry. Co.* 347 (354).

Southern Oregon points: Rates on box shooks and box material from southern Oregon mills to points in California, found unduly prejudicial as compared with rates from northern California mills and Westwood, Cal. Reparation awarded. *California Pine Box & Lumber Co. v. S. P. Co.* 372 (379).

Trinidad and Walsenburg districts: Rates on nut coal from, to points on the Billings line of the C., B. & Q. R. R., found unduly prejudicial to the extent they exceed rates to points on the Sargent Branch of the Billings line. *Lincoln Commercial Club v. C. & S. Ry. Co.* 557 (565).

Tuscaloosa, Ala.: Class and commodity rates from Ohio and lower Mississippi River crossings, Gulf and south Atlantic ports and eastern points and ports to Tuscaloosa, Ala., found not unduly prejudicial to Tuscaloosa in favor of Birmingham, Montgomery, and Selma, Ala. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (506).

Vermilion, S. Dak.: Distribution of cars by rotation to grain elevators at Vermilion, Burbank, and other South Dakota points during period of car shortage, found to be unduly prejudicial to complainants and unduly preferential of their competitors at same points. Reasonable rules prescribed. *Farmers' Elevator Co. v. C., M. & St. P. Ry. Co.* 475 (480).

Mines: Complainant purchased coal from mining company to be delivered at a siding at the company's mine at Figart, Pa. Defendant refused to furnish cars unless they were counted against the allotment of cars to the mining company under their car distribution rules. Contended that this resulted in undue prejudice, *Held*, Refusal to furnish cars not unlawful under the circumstances. *Greenfield & Co. v. P. R. R. Co.* 403 (408).

**Persons:**

Refusal of defendant to "expense forward" customs duties and brokerage fees from Newport, Vt., on shipments imported from Canada unless handled by its agent as customs broker, found unduly preferential of shippers employing defendant's agent. *Emery & Co. v. B. & M. R. R.* 200 (203).

Refusal to compensate complainant for the expense of spotting cars moving interstate to or from its plant at Sharon, Pa., while performing a like service without charge for complainant's competitors, found to subject complainant to undue prejudice. *Stewart Iron Co. v. P. Co.* 512 (516).

**PRICE.** *See* **VALUE OF COMMODITY.**

**PRIORITY DIRECTOR.**

Priority director, designated by the President under act approved August 10, 1917, is authorized to direct that traffic essential to the national defense shall be given priority in transportation. *Unification of Railroad Operation*, 757 (763).

**PRIVATE TRACKS.**

Combination rate on scrap iron, from a hold track at Eldson, Ill., within the Chicago switching district to a private side track at East Chicago, Ind., which exceeded rate from a private or industrial track within Chicago switching district, not shown unreasonable. *Price Iron & Steel Co. v. G. T. W. Ry. Co.* 215 (216).

**PRODUCTION.**

Hogs: The agricultural department estimates that on Jan. 1, 1917, there were in the States of Iowa, Minnesota, Illinois, Missouri, Wisconsin, and South Dakota, 23,136,000 hogs, or about 34 per cent of the entire production of the country. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380 (385).

Limestone: In 1915 the Bedford-Bloomington district in Indiana furnished 72.6 per cent of all the structural limestone used in the United States. *Official Classification No. 44*, 91 (96).

**PROFIT.**

By "profit" is meant a return upon investment in the proportion that is devoted to the service. *Reconsignment Case*, 590 (600).

**PROOF.** *See* **MISBILLING.**

**PROPORTIONAL RATES.**

*Charleston & Norfolk S. S. Co.* found not to be a common carrier within meaning of Panama Canal act, therefore the Commission is without jurisdiction to prescribe proportional rail rates from Ohio River crossings to Norfolk, in connection with proposed boat line. *Charleston & Norfolk S. S. Co.* 365 (368, 371).

Rail proportional rates to ports can only be named in connection with common carriers by water. *Id.* (371).

Proportional mileage rates on coal from Rapid City and Miles City to all points in South Dakota in connection with rates from Sheridan, Kirby, Hudson, and Glenrock, Wyo., prescribed. *Coal to South Dakota*, 750 (755, 756).

**PROPOSED REPORTS.**

The Commission can not allow a disregard of the rule providing for the time and manner in which exceptions to its examiners' proposed reports may be filed. *Fidelity Cotton Oil Co. v. A. & V. Ry. Co.* 542 (543).

**PRORATING.**

Method of prorating joint rates with connecting carriers for the lighterage and floatage service at New York, and deduction made on transcontinental traffic at San Francisco, shown. *New York Harbor Case*, 643 (692).

**PUBLISHED RATES.**

While it is generally true that the published transportation rates cover receipt, transportation, and delivery, this can not be construed as preventing the publication of separate terminal charges for peculiar terminal services. *Handling of Heavy Articles*, 323 (333).

**RAIL AND WATER RATES.** *See also* **BOAT LINES.**

On account of better marketing facilities about 60 per cent of the lumber shipped from Norfolk to Wilmington and Philadelphia moves all rail. *Coulbourn v. N. Y., P. & N. R. R. Co.* 54 (56).

Proposed increased proportional rates on canned goods from interior California points, applicable by water from San Francisco, Cal., to Portland and Astoria, Oreg., found justified and proposed increased minimum weight, found justified in part. *Canned Goods from San Francisco, Cal.*, 285 (286).

**RAIL AND WATER RATES—Continued.**

Rail proportional rates to ports can only be named in connection with common carriers by water. *Charleston & Norfolk S. S. Co.* 365 (371).

Increased rates on scrap waste leather, etc., via all-rail and rail-and-water routes from points in Connecticut and Massachusetts to Norfolk, Va., found justified. *National Utilization Corporation v. B. & A. R. R. Co.* 467 (469).

Comparison of special commodity boat rates on various articles from Mobile, Ala., to Tuscaloosa, Selma, and Montgomery, Ala., when taken in combination with rates to Mobile, portray the extent to which river competition is reflected in the through all-rail rates. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (502).

All-rail and rail-and-water rates on canned goods, soap, and special iron, from Baltimore, Md., to Tuscaloosa, Birmingham, Montgomery, and Selma, Ala., shown. *Id.* (497).

Comparative statement of through all-rail rates and combination all-rail rates from St. Louis, New Orleans, Cincinnati, and other points, to Mobile and water beyond. *Id.* (503-504).

Rates on clean rice and products from interior points to Atlantic seaboard not found unduly prejudicial compared with rates from interior points in Arkansas, Louisiana, and Texas. *Arkansas Rice Shippers Traffic Bureau v. A. A. R. R. Co.* 566 (573).

**RAILROAD WAR BOARD.**

Represents carriers' cooperative efforts to support the Government. *Unification of Railroad Operation*, 757 (761).

**RAILROADS.**

History of practices followed by the railroads since they began operation. *Unification of Railroad Operation*, 757.

**RATE BREAKING POINT.**

Generally speaking, Chicago is the rate-breaking point between the west and east. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380 (382, 397).

**RATE WAR.**

Agreement entered into between lines serving New York in 1877 as result of rate war, providing for differentials between Boston, New York, Philadelphia, and Baltimore, discussed. *New York Harbor Case*, 643 (682).

**REARGUMENT.**

Former finding that certain unrouted carload shipments of bulk corn between points in Minnesota were misrouted by having been transported over a higher rated interstate route, while a lower rated intrastate route was available, reversed on reargument. *McCaull-Dinsmore Co. v. G. N. Ry. Co.* 581.

**RECIPROCAL SWITCHING. See Switching.****RECONSIGNMENT.**

Charges assessed on corn from points in Iowa and Nebraska to Minneapolis, Minn., reconsigned to points in California, found upon rehearing to have been illegal to the extent that they exceeded joint through rate plus any applicable demurrage and reconsigning charges. Reparation awarded. *Van Dusen Harrington Co. v. C., M. & St. P. Ry. Co.* 59.

Additional services and necessary clerical and accounting services caused by. *Reconsignment Case*, 590 (595).

Carriers are entitled to charge the actual cost and a reasonable profit for reconsignment service. By "cost" is meant operating cost, and by "profit" a return upon investment in the proportion that it is devoted to the service. *Id.* (600).

Carriers entitled to charges in addition to the line haul rate for reconsignment services. Cases cited sustaining this principal. *Id.* (613).

## RECONSIGNMENT—Continued.

Proposed charges of \$2 and \$5 per car for change in name of consignor on reconsigned shipments, justified to extent that they do not exceed \$1 per car. Id. (616).

Rule providing that if request is made for the diversion or reconsignment of freight the carrier will make diligent effort to locate the shipment and effect the desired service, but will not be responsible for failure to do so unless such failure is due to negligence of its employees, justified. Id. (617).

Proposed charge of \$2 per car for diversion or reconsignment in transit prior to arrival of shipment at original destination or terminal yard serving the destination justified. Id. (617).

Proposed charge of \$2 per car for diversion or reconsignment when order for that service is placed at billed destination in time to permit instructions to be given to yard employees prior to the arrival of the car justified. Id. (617-625).

Increased charges for diversion and reconsignment proposed by certain New England carriers not justified. Id. (608, 624).

Proposed charge of \$5 per car for diversion or reconsignment at original destination to a point outside the switching limits, on orders received after arrival, justified; but held that the same charge proposed for reforwarding to a similar point cars which have been placed for unloading but have not been unloaded has been justified only to extent indicated. Id. (625).

Proposed charge of \$2 per car for stopping car prior to arrival at billed destination to be held for orders, justified. Id. (626).

Proposed charge of local tariff rates for reforwarding to a point within the switching limits cars which have been placed for unloading but have not been unloaded found justified. Id. (626).

Proposed rule providing that on reconsigned shipments no charge will be made for a single change in the name of the consignee or destination if received in time at the first destination, and a charge of \$2 per car if received within 24 hours after arrival at terminal yard, and \$5 if received subsequent thereto, justified. Id. (627-632).

Contention that following *I. C. C. v. Stickney*, 215 U. S., 98, the Commission has no right to consider that reconsignment in coal traffic is covered by the freight rates, *Held*, That decision not regarded as restricting the Commission's power of investigation of proposed rules, under section 15, or as affecting the burden of proof. Id. (630).

Reconsignment, as a special service, warrants a proper charge in addition to the rate, and it is impossible to distinguish between coal and other commodities. Id. (630).

When the assessment of a reconsigning charge results in greater aggregate compensation to the carrier than the sum of intermediate rates, it can not be considered that section 4 has been violated for the services performed are not the same in the two instances. Id. (633).

Proposed application of charges for reconsignment, regardless of the method of freight rate construction, justified. Id. (633).

Proposed regulation prohibiting reconsignment to an embargoed point justified in part. Id. (633-635).

Charges proposed for transferring the contents of certain reconsigned cars not justified. Id. (635).

Charges proposed for diversion or reconsignment of grain and certain other commodities at Pittsburgh, Pa., and other points not found to be unreasonable in so far as they do not exceed the charges proposed in the general rules herein approved, but not approved because unjust discrimination would result. Id. (636-641).

**RECONSIGNMENT—Continued.**

Table showing present and proposed rules applicable at St. Louis, Mo., and East St. Louis, Ill., to the reconsignment of carloads of hay and grain which have not been placed for unloading. *Id.* (639).

Shipments arriving at holding yards, billed to "New York lighterage" and later ordered to a specified destination within the lighterage limits may be forwarded for \$2 per car, whereas cars reconsigned to points in New Jersey are subject to charge of \$5 per car. *Held*, Difference in transportation conditions justifies differences in charges. *New York Lighterage Case*, 643 (726-728).

**REDUCTION.**

Proposed reduction from five to two days in the free time allowed for holding domestic freight at the port of New York, consigned to "New York lighterage," justified. *New York Harbor Storage*, 141 (159).

Proposed reduction from 15 to 5 days in the free time allowed on export traffic at the north Atlantic ports, and from 10 to 5 days at Gulf ports, found not justified. Reduction to 10 days at north Atlantic ports, and to 7 days at Gulf ports, found reasonable. *Export Freight Free Time*, 162 (180, 189).

Proposed reduction from 10 to 5 days in the free time applicable to bunker coal at the ports of New Orleans, Mobile, and Pensacola, found justified. *Id.* (198).

**REDUCTION IN RATES.**

By carriers:

Reparation awarded on shipments of live stock feed, in carloads and live stock feed and poultry feed in mixed carloads from Waukegan, Ill., to destinations in western trunk line territory on basis of rates subsequently established. *Blatchford Calf Meal Factory v. E., J. & E. Ry. Co.* 10.

Ratings of 3rd and 4th class on acetylene gas cylinders, coppered, nicked or painted, from Cincinnati, Ohio, to Atlanta, Ga., originating at Speedway, Ind., found unreasonable to the extent that they exceeded 6th class rating contemporaneously in effect and subsequently established. Reparation awarded. *Prest-O-Lite Co., Inc. v. C., H. & D. Ry. Co.* 22 (24).

Rates on mussel shells from Cochrane, Ala., to Muscatine, Iowa, found unreasonable to the extent that it exceeded rates subsequently established. Reparation awarded. *Kath Co., Inc. v. A., T. & N. Ry.* 42.

Rates on unprinted wrapping paper from Floriston, Cal., to Jacksonville, Fla., destined to Sanford, Fla., found unreasonable to the extent that they exceeded 88½ cents per 100 pounds subsequently established. *Crown Willamette Paper Co. v. S. P. Co.* 44 (45).

Class rates on empty tin cans, from Baltimore, Md., to Philadelphia, Pa., Camden, N. J., Bethlehem, Md., and other points, moving interstate found unreasonable to the extent that they exceeded commodity rates subsequently established. Reparation awarded. *Continental Can Co. v. A. C. R. R. Co.* 82.

Rates on egg-case fillers, from Coffeyville, Kans., to Gentry, Ark., reduced and rates from Kansas City territory increased, removing any undue prejudice that may have existed. Reparation denied. Complaint dismissed. *Creamery Package Mfg. Co. v. K. C. S. Ry. Co.* 84.

Class rates on empty tin cans, from Baltimore, Md., to North Wilkesboro, Elkin, and other North Carolina points, found unreasonable to the extent that it exceeded commodity rate subsequently established. Reparation awarded. *Southern Can Co. v. S. Ry. Co.* 85.

Rates on sulphur from Bryan Mound, Tex., to Connable, Ala., not shown to have been unreasonable as compared with lower rate subsequently established. *Du Pont de Nemours Powder Co. v. H. & B. V. Ry. Co.* 221 (222).



## RECONSIGNMENT—Continued.

Proposed charges of \$2 and \$5 per car for change in name of consignor on reconsigned shipments, justified to extent that they do not exceed \$1 per car. *Id.* (616).

Rule providing that if request is made for the diversion or reconsignment of freight the carrier will make diligent effort to locate the shipment and effect the desired service, but will not be responsible for failure to do so unless such failure is due to negligence of its employees, justified. *Id.* (617).

Proposed charge of \$2 per car for diversion or reconsignment in transit prior to arrival of shipment at original destination or terminal yard serving the destination justified. *Id.* (617).

Proposed charge of \$2 per car for diversion or reconsignment when order for that service is placed at billed destination in time to permit instructions to be given to yard employees prior to the arrival of the car justified. *Id.* (617-625).

Increased charges for diversion and reconsignment proposed by certain New England carriers not justified. *Id.* (608, 624).

Proposed charge of \$5 per car for diversion or reconsignment at original destination to a point outside the switching limits, on orders received after arrival, justified; but held that the same charge proposed for reforwarding to a similar point cars which have been placed for unloading but have not been unloaded has been justified only to extent indicated. *Id.* (625).

Proposed charge of \$2 per car for stopping car prior to arrival at billed destination to be held for orders, justified. *Id.* (626).

Proposed charge of local tariff rates for reforwarding to a point within the switching limits cars which have been placed for unloading but have not been unloaded found justified. *Id.* (626).

Proposed rule providing that on reconsigned shipments no charge will be made for a single change in the name of the consignee or destination if received in time at the first destination, and a charge of \$2 per car if received within 24 hours after arrival at terminal yard, and \$5 if received subsequent thereto, justified. *Id.* (627-632).

Contention that following *I. C. C. v. Stickney*, 215 U. S., 98, the Commission has no right to consider that reconsignment in coal traffic is covered by the freight rates, *Held*, That decision not regarded as restricting the Commission's power of investigation of proposed rules, under section 15, or as affecting the burden of proof. *Id.* (630).

Reconsignment, as a special service, warrants a proper charge in addition to the rate, and it is impossible to distinguish between coal and other commodities. *Id.* (630).

When the assessment of a reconsigning charge results in greater aggregate compensation to the carrier than the sum of intermediate rates, it can not be considered that section 4 has been violated for the services performed are not the same in the two instances. *Id.* (633).

Proposed application of charges for reconsignment, regardless of the method of freight rate construction, justified. *Id.* (633).

Proposed regulation prohibiting reconsignment to an embargoed point justified in part. *Id.* (633-635).

Charges proposed for transferring the contents of certain reconsigned cars not justified. *Id.* (635).

Charges proposed for diversion or reconsignment of grain and certain other commodities at Pittsburgh, Pa., and other points not found to be unreasonable in so far as they do not exceed the charges proposed in the general rules herein approved, but not approved because unjust discrimination would result. *Id.* (636-641).

**RECONSIGNMENT—Continued.**

Table showing present and proposed rules applicable at St. Louis, Mo., and East St. Louis, Ill., to the reconsignment of carloads of hay and grain which have not been placed for unloading. *Id.* (639).

Shipments arriving at holding yards, billed to "New York lighterage" and later ordered to a specified destination within the lighterage limits may be forwarded for \$2 per car, whereas cars reconsigned to points in New Jersey are subject to charge of \$5 per car. *Held*, Difference in transportation conditions justifies differences in charges. *New York Lighterage Case*, 643 (726-728).

**REDUCTION.**

Proposed reduction from five to two days in the free time allowed for holding domestic freight at the port of New York, consigned to "New York lighterage," justified. *New York Harbor Storage*, 141 (159).

Proposed reduction from 15 to 5 days in the free time allowed on export traffic at the north Atlantic ports, and from 10 to 5 days at Gulf ports, found not justified. Reduction to 10 days at north Atlantic ports, and to 7 days at Gulf ports, found reasonable. *Export Freight Free Time*, 162 (180, 189).

Proposed reduction from 10 to 5 days in the free time applicable to bunker coal at the ports of New Orleans, Mobile, and Pensacola, found justified. *Id.* (198).

**REDUCTION IN RATES.**

By carriers:

Reparation awarded on shipments of live stock feed, in carloads and live stock feed and poultry feed in mixed carloads from Waukegan, Ill., to destinations in western trunk line territory on basis of rates subsequently established. *Blatchford Calf Meal Factory v. E., J. & E. Ry. Co.* 10.

Ratings of 3rd and 4th class on acetylene gas cylinders, coppered, nicked or painted, from Cincinnati, Ohio, to Atlanta, Ga., originating at Speedway, Ind., found unreasonable to the extent that they exceeded 6th class rating contemporaneously in effect and subsequently established. Reparation awarded. *Prest-O-Lite Co., Inc. v. C., H. & D. Ry. Co.* 22 (24).

Rates on mussel shells from Cochrane, Ala., to Muscatine, Iowa, found unreasonable to the extent that it exceeded rates subsequently established. Reparation awarded. *Kath Co., Inc. v. A., T. & N. Ry.* 42.

Rates on unprinted wrapping paper from Floriston, Cal., to Jacksonville, Fla., destined to Sanford, Fla., found unreasonable to the extent that they exceeded 88½ cents per 100 pounds subsequently established. *Crown Willamette Paper Co. v. S. P. Co.* 44 (45).

Class rates on empty tin cans, from Baltimore, Md., to Philadelphia, Pa., Camden, N. J., Bethlehem, Md., and other points, moving interstate found unreasonable to the extent that they exceeded commodity rates subsequently established. Reparation awarded. *Continental Can Co. v. A. C. R. R. Co.* 82.

Rates on egg-case fillers, from Coffeyville, Kans., to Gentry, Ark., reduced and rates from Kansas City territory increased, removing any undue prejudice that may have existed. Reparation denied. Complaint dismissed. *Creamery Package Mfg. Co. v. K. C. S. Ry. Co.* 84.

Class rates on empty tin cans, from Baltimore, Md., to North Wilkesboro, Elkin, and other North Carolina points, found unreasonable to the extent that it exceeded commodity rate subsequently established. Reparation awarded. *Southern Can Co. v. S. Ry. Co.* 85.

Rates on sulphur from Bryan Mound, Tex., to Connable, Ala., not shown to have been unreasonable as compared with lower rate subsequently established. *Du Pont de Nemours Powder Co. v. H. & B. V. Ry. Co.* 221 (222).

## REDUCTION IN RATES—Continued.

## By carriers—Continued.

Claim for reparation on certain tank-car loads of imported blackstrap molasses shipped from New Orleans, La., to Owensboro, Ky., on basis of subsequently established rate, denied. Complainant not proper party entitled thereto. *Rapier Sugar Feed Co. v. L. & N. R. R. Co.* 222.

Upon request, rate on coconut oil from San Francisco, Cal., to Ivorydale, Ohio, was established, but through error made applicable to import oil only. Rate later corrected to apply to domestic shipments and reparation awarded on basis of the rate subsequently established. *Proctor & Gamble Co. v. C., C., C. & St. L. Ry. Co.* 231.

Commodity rate on beer, from La Crosse, Wis., to Lemmon, S. Dak., found unreasonable to the extent it exceeded rate subsequently established. Reparation awarded. *Gund Brewing Co. v. C., M. & St. P. Ry. Co.* 233 (234).

Class rate on lumber, from Maylene, Ala., to Chattanooga, Tenn., found unreasonable to the extent that it exceeded commodity rate subsequently established. Reparation awarded. *Advance Lumber Co. v. S. Ry. Co.* 237 (238).

Combination rates on salt from Rittman, Ohio, and grouped points, to Lafayette, La., found unreasonable to the extent they exceeded subsequently established rate. Reparation awarded. *Lafayette Chamber of Commerce v. A. & V. Ry. Co.* 246 (247).

Rating of 1st class on l. c. l. shipment of metal extension curtain rods from Ogdensburg, N. Y., to Tacoma, Wash., found unreasonable to the extent it exceeded commodity rate subsequently established. Reparation awarded. *Harmon & Co. v. N. Y. C. R. R. Co.* 277 (278).

Reparation awarded on shipments of box shook and box material from southern Oregon points to points in California, on basis of rates subsequently established. *California Pine Box & Lumber Co. v. S. P. Co.* 372 (379).

Rating of 6th class on talc, from New York, N. Y., to Concord, N. C., found unreasonable to the extent it exceeded commodity rate subsequently established. Reparation awarded. *Kerr Bleaching & Finishing Works v. O. D. S. S. Co.* 472.

## By Commission:

Rates on coal tar, in barrels or tank cars between Utah common points and Colorado common points, and rates on coal-tar pitch in barrels from Utah common points to Colorado common points, found unreasonable and reasonable rates prescribed. *Barrett Mfg. Co. v. A., T. & S. F. Ry. Co.* 27.

Rates on lumber from points in Accomac and Northampton counties, Va., to Wilmington, Del., and Philadelphia, Pa., found unreasonable and reasonable maximum rates prescribed. *Coulbourn v. N. Y., P. & N. R. R. Co.* 54 (57).

Rating of 1st class on transplanters other than tree transplanters, k. d., without barrels, l. c. l., from Racine, Wis., to Portland, Oreg., found unreasonable to the extent it exceeded second class rate. Reparation awarded. *Mitchell, Lewis & Staver Co. v. C. & N. W. Ry. Co.* 71.

Rates on lumber, from Nick's Creek, Tenn., to Cincinnati, Ohio, found unduly prejudicial to the extent that they exceeded by more than 1 cent per 100 pounds the rate contemporaneously maintained from Norma, Tenn. *Southern Lumber & Mfg. Co. v. Tennessee Ry. Co.* 87 (90).

Rates on prepared roofing and building paper from Chicago and Chicago Heights to Tulsa and Muskogee, Okla., found unreasonable to the extent they exceed rates prescribed in 34 I. C. C., 3. *Standard Roofing Co. v. M., K. & T. Ry. Co.* 212 (214).

**REDUCTION IN RATES—Continued.****By Commission—Continued.**

Rates on apples, from points in Arkansas to Muskogee, Okla., found unduly prejudicial to the extent that they exceed by more than 5 cents, the rates to Fort Smith, Ark. *Muskogee Produce Co. v. St. L. & S. F. R. R. Co.* 239 (242).

Through routes and joint rates required to be established on coke, from points on Interstate R. R. to points in Alabama, Florida and other states, not in excess of junction point rates applicable from Appalachia, Blackwood, Josephine, and Norton, Va. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 282 (284).

Rates on live stock from points in Missouri to East St. Louis and National Stock Yards, Ill., found unjust and unreasonable to extent they exceed scale of rates prescribed herein. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (313, 320).

Rates on petroleum oil and its products from southeastern Kansas to points in Oklahoma, found unreasonable. Reasonable maximum rates prescribed. Reparation and fourth section relief, denied. *National Petroleum Asso. v. M., K. & T. Ry. Co.* 355 (360-364).

Percentages of the New York-Chicago rates assigned to certain groups in the state of Michigan, found to result in undue prejudice to the lower peninsula of Michigan in favor of Detroit, Mich., and points in Ohio and Indiana. Reduction authorized. *Michigan Percentage Cases*, 409 (458).

Present rates on horses and mules from Bowling Green, Ky., to Birmingham, Ala., found unreasonable to the extent they exceed proposed rates. Reparation awarded. *Alabama Packing Co. v. L. & N. R. R. Co.* 524 (530).

Present and proposed rates on live stock from Franklin, Ky., Gallatin and Nashville, Tenn., to Birmingham, Ala., found unreasonable. Reasonable rates prescribed. Reparation awarded. *Id.* (530-531).

Rates on shelled or unshelled peanuts from Houston, Tex., to St. Louis, Mo., Chicago, Ill., and other points, found unreasonable. Reasonable rates prescribed. *Fidelity Cotton Oil Co. v. A. & V. Ry. Co.* 542 (548).

Rates on nut coal from the Trinidad and Walsenburg districts to points on the Billings line of the C., B. & Q. R. R., found unduly prejudicial to the extent they exceed rates to points on the Sargent Branch of the Billings line. Reasonable rates prescribed. *Lincoln Commercial Club v. C. & S. Ry. Co.* 557 (565).

Rates on rice and products from Arkansas to Oklahoma found unreasonable to extent they exceed rates herein prescribed. *Arkansas Rice Shippers Traffic Bureau v. A. A. R. R. Co.* 566 (574).

Finding in original report that rates on coal from Sheridan, Kirby, Hudson, and Glenrock, Wyo., to South Dakota destinations are unreasonable, reaffirmed and reasonable rates prescribed. Petition for rehearing denied. *Coal to South Dakota*, 750 (755, 756).

**REFUSAL.**

Defendant refused to place cars on complainant's spur track near Rockwood, Tenn., for shipment of tanbark, as agreed, on account of its being on a steep grade, while subsequently placing a car there for another shipper. Contention of unjust discrimination, not sustained. *Kindred v. C., N. O. & T. P. Ry. Co.* 73.

Rule of the G. N. Ry. to the effect that it will not permit its cars loaded with grain at South Dakota points to move through to Omaha, under through routes and joint rates in effect, found unreasonable. *Omaha Grain Exchange v. G. N. Ry. Co.* 532 (539).

**REHEARING.** *See also* SUPPLEMENTAL REPORT.

Rates charged on low-grade logs, in carloads, from points in Alabama, Tennessee, and Georgia to Atlanta, Ga., found upon rehearing to have been unreasonable to the extent that they exceeded rates contemporaneously in effect on common logs from and to the same points. Reparation awarded. *Nebraska Bridge Supply & Lumber Co. v. N., C. & St. L. Ry.* 39.

Charges assessed on corn from points in Iowa and Nebraska to Minneapolis, Minn., reconsigned to points in California, found upon rehearing to have been illegal to the extent that they exceeded joint through rate plus any applicable demurrage and reconsigning charges. Reparation awarded. *Van Dusen Harrington Co. v. C., M. & St. P. Ry. Co.* 59.

Upon rehearing, rules governing fares of caretakers, of live stock to and from Sioux City, Iowa, from points in southwestern Minnesota, found unduly prejudicial in so far as they differ from those in effect to and from St. Paul on live stock to South St. Paul. *Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co.* 279 (281).

Former finding that rating of  $1\frac{1}{2}$  times first class charged on tar heating tank from Frankfort, N. Y., to Portland, Oreg., affirmed on rehearing. *Beall & Co. v. O.-W. R. R. & N. Co.* 474.

Finding in original report that the rates on coal, from Sheridan, Kirby, Hudson, and Glenrock, Wyo., to South Dakota points are unreasonable, reaffirmed, and reasonable rates prescribed. Petition for rehearing denied. *Coal to South Dakota*, 750 (755, 756).

**RELATIONSHIP OF RATES.**

The rate from Chicago to Duluth is related to the rate from Chicago to St. Paul. *Western Trunk Lines Iron and Steel*, 109 (111).

Defendants admit that rates charged on coconut oil in tank cars from San Francisco, Cal., to Ivorydale, Ohio, did not bear the proper relationship to the rates to Chicago and St. Louis and that charges collected for the haul beyond Danville was out of proportion to the additional distance from that point to Ivorydale. *Procter & Gamble Co. v. C., C. & St. L. Ry. Co.* 231 (232).

Relationship of rates from Ohio and Mississippi river crossings, New Orleans, Buffalo-Pittsburgh territory, Virginia cities, south Atlantic ports and interior eastern points, to Tuscaloosa, Birmingham, Selma, and Montgomery, Ala., shown. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (490-494).

Merely to show that carriers in one section maintain rates which are lower per mile than carriers elsewhere is not sufficient to establish an unlawful rate relationship. *Fidelity Cotton Oil Co. v. A. & V. Ry. Co.* 542 (545).

**RELATIVE ADJUSTMENT.**

Conceded that Staten Island should take the same rates as northern New Jersey. Staten Island is a part of the city of New York and extending the Philadelphia rates to a part of the city while maintaining higher rates to other parts is not regarded with equanimity by those who are endeavoring to develop the port. *New York Harbor Case*, 643 (712).

**RELATIVE RATES.** *See also* PREFERENCES AND PREJUDICES (LOCALITIES).

Beaver Falls, N. Y.: Complainant contrasts rates on wood-pulp board from Beaver Falls on the L. & B. R. R. R. to points in C. F. A. territory with relative lower rates from Fulton and Piermont, N. Y., and South Windham, Me., but is without knowledge of comparative transportation conditions. *Lewis Co. v. L. & B. R. R. R. Co.* 79 (80).

Chester, Va.: Rates on lumber, from Chester, Va., to points west of the Buffalo-Pittsburgh line in New York, Pennsylvania, Ohio, and Michigan, found unreasonable to the extent they exceed by more than 1.5 cents per 100 pounds the rates contemporaneously in effect from Richmond, Va. Reparation awarded. *Conquest & Son v. S. A. L. Ry.* 517 (522).



**RELATIVE RATES—Continued.**

- Chicago and Chicago Heights, Ill.: Rates on prepared roofing and building paper from, to Tulsa and Muskogee, Okla., found unreasonable to the extent they exceed the rates from St. Louis. Reparation awarded. *Standard Roofing Co. v. M., K. & T. Ry. Co.* 212 (214).
- Cincinnati, Ohio: Rates on lumber, from Nick's Creek, Tenn., to Cincinnati, Ohio, found unduly prejudicial to the extent that they exceeded by more than 1 cent per 100 pounds the rate contemporaneously maintained from Norma, Tenn. *Southern Lumber & Mfg. Co. v. Tennessee Ry. Co.* 87 (90).
- Jacksonville, Fla.: Rate on unprinted wrapping paper, from Jacksonville, Fla., to Sanford, Fla., originating at western points, not found unreasonable or unduly prejudicial as compared with local rate to Palatka, Fla. *Crown Wilamette Paper Co. v. S. P. Co.* 44 (47).
- Lemmon, S. Dak.: Rates on beer from La Crosse, Wis., to Lemmon, S. Dak., compared with rate to Minnesota Transfer, Minn. *Gund Brewing Co. v. C., M. & St. P. Ry. Co.* 233 (234).
- Missouri points: Rates on live stock from certain Missouri points to St. Louis and East St. Louis, compared with rates from equidistant Missouri points to Kansas City. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (306).
- New England territory: Rates on scrap waste leather, etc., from points in New England territory to Norfolk, Va., are upon a somewhat higher basis than the rates from C. F. A. territory, but this fact of itself does not establish the unreasonableness of the former. *National Utilization Corporation v. B. & A. R. R. Co.* 467 (469).
- New York Harbor: Rate situation at the port of New York compared with rate construction at Ohio River crossings. *New York Harbor Case*, 643 (705).
- New York Harbor: If rates to and from Manhattan should properly be higher than the rates to and from Jersey City because of the cost of the harbor transfer, it would seem that the rates to and from Camden should likewise be higher than the rates to and from Philadelphia because of the corresponding cost there incurred. *Id.* (714).
- South Omaha, Nebr., and other points in Transcontinental Group F: Higher rates on packing-house products in mixed carloads to California terminals than the combination on group G points, not found to have been unreasonable. Complaint dismissed. *Swift & Co. v. U. P. R. R. Co.* 49 (50).
- Southwestern territory: Territory west and southwest of the Missouri River is to the western district what C. F. A. territory is to the eastern district and it is not proper to make comparison between the two districts to determine how rates in Missouri territory should compare with the *C. F. A. Scale*. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (311-312).
- Wilmington and Philadelphia: Rates on lumber from points in Accomac and Northampton Counties, found unreasonable as compared with rate applicable from Norfolk, Va. Fourth section application seeking authority to continue lower rates, denied. *Coulbourn v. N. Y., P. & N. R. R. Co.* 54 (57).

**RELEASE OF CARS.**

- The Commission has sanctioned increased demurrage and storage charges and permitted reductions in free time in order to keep freight cars on the move. *Export Freight Free Time*, 162 (177).
- It is in the interest of shippers as well as carriers that all cars be released as promptly as possible. *Id.* (179).
- Any reasonable action upon the part of carriers to keep freight cars moving and to eliminate terminal congestion is manifestly in the public interest, and should not only be approved but encouraged by the Commission. *Id.* (179, 196).
- Carriers are justified in establishing such car service rules as will tend toward the prompt release of equipment. *Id.* (179, 196).



**RELEASED RATES.**

Alleged that rate of 1½ times first class on l. c. l. shipment of household goods from Fairmont, W. Va., to Portland, Oreg., was unreasonable to the extent it exceeded 1st-class rate. *Held*, no value declared. Evidence insufficient upon which to base a finding, *Perdue v. B. & O. S. W. R. R. Co.* 210 (212).

Statute of Missouri governing released rates, if applied to interstate traffic, would be in violation of the so-called Cummins amendment and therefore void.

*Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (319).

Finding in 40 I. C. C., 347, respecting minimum weights in official and southern classification territories, found to result in less than reasonable charges, modified in so far as it pertains to minimum weights on l. c. l. live stock and to standard or basic values on ordinary live stock. *Live Stock Classification*, 335 (342).

Suggested that no different rule should apply on straight carloads of blooded live stock than apply on l. c. l. shipments and that charges on such shipments should not exceed the carload rate as increased by a percentage to cover the excess value, upon which the standard rate is predicated. *Id.* (344).

**REOPENING.** *See REHEARING; SUPPLEMENTAL REPORT.*

**RESTORED RATES.**

Charges assessed on shipments of wet wood pulp from Detroit, Mich., to Syracuse, N. Y., prior to reestablishment of commodity rate canceled through error, found unreasonable. Reparation awarded. *Syracuse Chamber of Commerce v. M. C. R. R. Co.* 14.

Rate on lumber, from Platanus, Mo., to Cairo, Ill., found unreasonable to the extent it exceeded rate formerly in effect and subsequently reestablished. Reparation awarded. *McFarland Lumber Co. v. B. C. R. R. Co.* 471.

**RESTORED SERVICE.**

Charges exacted on cotton from Davidson and Snyder, Okla., to Texas City, Tex., and New Orleans, La., for export, shipped prior to reestablishment of concentration and compression service at Lawton, Okla., found unreasonable. Reparation awarded. *Campbell & Cleaver v. St. L. & S. F. R. R. Co.* 8.

**RIPARIAN RIGHTS.**

Policies of the states of New York and New Jersey in regard to. *New York Harbor Case*, 643 (667).

**RIVER CITIES.**

Practice of carriers throughout the country to apply the same rates on long distance traffic to and from points located on opposite sides of a river or harbor, regardless of the nature of the facilities employed in transferring the freight between them, shown. *New York Harbor Case*, 643 (714).

**ROUTES.**

Carriers will be expected to correct a fourth section departure occurring in connection with a route not used by carriers but which is available under their joint tariffs. *Galion Iron Works & Mfg. Co. v. B. & O. R. R. Co.* 136 (140).

**ROUTING INSTRUCTIONS.**

Reparation awarded on lumber from Eagle Gorge, Wash., to Gordon, Nebr., routed "N. P. to transfer c/o C. & N. W." No rate inserted in bill of lading, found to have been misrouted, as N. P. should have delivered shipment to C. & N. W. at Oakes, N. Dak. *Pacific Coast Shippers Asso. v. N. P. Ry Co.* 57.

On shipment of corn from Green Valley, Minn., to Kansas City, Mo., routing instructions were given "G. N., C., B. & Q., care S. F. at Kansas City, Mo." The shipment was unloaded at an elevator on the Burlington tracks, and complainant contended that lower rate in effect which named Kansas City as a point of destination on the Sante Fe was applicable, not sustained, as tariff contemplated a line haul by S. F. in connection with G. N. and C., B. & Q. *Flanley Grain Co. v. G. N. Ry Co.* 74.

**ROUTING INSTRUCTIONS—Continued.**

On shipment of bridge builders' outfit from Kenova, W. Va., to Greenville Piers, N. J., bill of lading specified Greenville "for free lighterage." Greenville is an inland point. *Held*, to have been misrouted as notation "for free lighterage" was sufficient to put carrier on notice. Reparation awarded. *American Bridge Co. v. N. & W. Ry. Co.* 235 (236).

**RULES AND REGULATIONS.**

If rules proposed by respondents for determining charges on mixed carloads of ordinary and "other than ordinary" live stock in official and southern classification territories, results in reduction in charges these rules may be embodied in tariffs subject to any action deemed proper by the Commission in the future. *Live Stock Classification*, 335 (343).

Transit rules and regulations respecting shipments of hogs at points in Wisconsin, Illinois, Iowa, and Minnesota, not found unduly prejudicial to complainants and the public live stock markets at Chicago, Denver, and other points. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380 (402).

**RULES OF PRACTICE. See PLEADING AND PRACTICE.****SCALE OF RATES.**

Scale of rates on live stock prescribed by the Public Service Commission of Missouri on intrastate traffic not shown proper measure of reasonableness to apply from Missouri points to East St. Louis, nor proper standard to remove undue prejudice found to flow from present relation of state and interstate rates. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (302).

C. F. A. scale prescribed as basis for interstate rates from Missouri points to East St. Louis, Ill. *Id.* (313).

**SEASONAL TRAFFIC.**

Peanuts are shipped from farms during period from October to December and from mills from October to July. *Fidelity Cotton Oil Co. v. A. & V. Ry. Co.* 542 (544).

**SECTION 1.**

Transportation of caretakers held subject to the act and to regulations of Commission, and to provision of section 1 which required all regulations or practices to be just and reasonable. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (319).

Construed as to "common carrier." *Charleston & Norfolk S. S. Co.* 365 (367).

Construed as to through routes. *Omaha Grain Exchange v. G. N. Ry. Co.* 532 (537).

**SECTION 3.**

Construed. *Emery & Co. v. B. & M. R. R.* 200 (201).

Phrase "in any respect whatsoever" of section 3, construed. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (319).

Provision of section 3 prohibiting undue preference held to be applicable to the transportation of caretakers. *Id.* (319).

**SECTION 4.**

Carriers will be expected to correct a fourth section departure occurring in connection with a route not used by carriers but which is available under their joint tariffs. *Galion Iron Works & Mfg. Co. v. B. & O. R. R. Co.* 136 (140).

Contention that the fourth section would have to be changed to read "kinds" instead of "kind" of property in order for the combination wheat and flour rate between given points to constitute a violation of the long and short haul rule as compared with lower through wheat rate to more distant point, places a strained construction on the act. *Royal Milling Co. v. G. N. Ry. Co.* 263 (270).

When the assessment of a reconsigning charge results in greater aggregate compensation to the carrier than the sum of intermediate rates, it can not be considered that section 4 has been violated for the services performed are not the same in the two instances. *Reconsignment Case*, 590 (633).

SECTION 5. *See* ANTITRUST LAWS.SECTION 15. *See also* APPLICATION.

Construed as to period of time covered by Commission's orders. *Charleston & Norfolk S. S. Co.* 365 (368).

Contention that following *I. C. C. v. Stickney*, 215 U. S., 98, the Commission has no right to consider that reconsignment in coal traffic is covered by the freight rates, *Held*, That decision not regarded as restricting the Commission's power of investigation of proposed rules, under section 15, or as affecting the burden of proof. *Reconsignment Case*, 590 (630).

## SECTION 16.

Construed as to modifying orders. *Charleston & Norfolk S. S. Co.* 365 (368).

## SECURITIES.

Two-thirds of railroad securities owned abroad prior to August 1, 1914, were absorbed by American capital. *Unification of Railroad Operation*, 757 (759).

## SEPARATE PUBLICATION OF CHARGES.

While it is generally true that the published transportation rates cover receipt, transportation, and delivery, this can not be construed as preventing the publication of separate terminal charges for peculiar terminal services. *Handling of Heavy Articles*, 323 (333).

## SHRINKAGE.

Charges on green timbers bases on weights ascertained near point of origin, not shown unreasonable as compared with lower weights at destination, due to evaporation in transit. *Trexler Lumber Co. v. N. Y., N. H. & H. R. R. Co.* 229 (230).

## "SINGLE LINE."

By "single line" is meant one line of railroad or two or more lines of railroad under the same management or control. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (320).

## SOUTHWESTERN TERRITORY.

Territory west and southwest of the Missouri River is to the western district what C. F. A. territory is to the eastern district and it is not proper to make comparison between the two to determine how rates in Missouri territory should compare with the C. F. A. scale. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (311-312).

## SPECIAL REPORT.

Special report to Congress. *Unification of Railroad Operation*, 757.

## SPOTTING CARS.

Refusal to compensate complainant for spotting cars to or from its plant at Sharon, Pa., during period between decision in *Industrial Railways Case*, 29 I. C. C., 212, and *Car Spotting Charges*, 34 I. C. C., 609, while performing similar service for complainants competitors without an additional charge found to result in undue prejudice to complainant. *Stewart Iron Co. v. P. Co.* 512 (516).

## SPREAD IN RATES.

Increased spread between the rates on lumber from Nick's Creek and Norma, Tenn., to Cincinnati, Ohio, not justified. *Southern Lumber & Mfg. Co. v. Tennessee Ry. Co.* 87 (90).

Spread in rates on lumber from points in Missouri, Texas and other states to Sioux City, Iowa, and Omaha, Nebr., found unduly prejudicial to Sioux City to the extent they exceeded by more than 2 cents the rates to Omaha. *Traffic Bureau Sioux City Commercial Club v. A. & W. Ry. Co.* 347 (348, 354).

STATE AND INTERSTATE. *See also* CARETAKERS.

Determination of question of misrouting on shipment of saw logs moving over an interstate route between two points in the same state at joint rate lower than combination rate over an intrastate route, unnecessary. *Complaint dismissed. Peshtigo Lumber Co. v. W. N. Ry. Co.* 6 (7).

**STATE AND INTERSTATE—Continued.**

Alleged misrouting on carload of nut coal from Scammon, Kans., to Abilene, Kans., moving interstate, on the basis of lower rate in effect via intrastate route, not sustained. Complaint dismissed. *Kruger Lumber Co. v. St. L. & S. F. R. R. Co.* 52.

Rates on lumber from points in Accomac and Northampton counties to Wilmington and Philadelphia compared with intrastate rates on lumber in Virginia, North Carolina and other states. *Coulbourn v. N. Y., P. & N. R. R. Co.* 54 (55).

Intrastate rates are not controlling in gauging the reasonableness of interstate rates, but in connection with other facts and other rates, they are not without significance as a basis for comparison. *Id.* (55).

Record insufficient to justify assumption that the Iowa and Illinois rates on live stock would be just and reasonable for application on interstate traffic. *Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co.* 287 (301).

Scale of rates on live stock prescribed by the Public Service Commission of Missouri on intrastate traffic is not shown to be the proper measure of reasonableness to apply from Missouri points to East St. Louis, nor the proper standard by which to remove the undue prejudice found to flow from the present relation of state and interstate rates. *Id.* (302).

Relation of interstate rates on live stock to east St. Louis and National Stock Yards, and the intrastate rates to St. Louis, found to subject East St. Louis and National Stock Yards to undue prejudice in favor of St. Louis. *Id.* (321).

Former finding that certain unrouted carload shipments of bulk corn between points in Minnesota were misrouted by having been transported over a higher rated interstate route, while a lower rated intrastate route was available, reversed on reargument. *McCaull-Dinsmore Co. v. G. N. Ry. Co.* 581.

**STATE CONSTITUTION.**

Legislature of state of New Jersey forbidden by a constitutional provision to incur a debt more than \$100,000 without consent of the people of the state. *New York Harbor Case*, 643 (666).

**STATE STATUTE.**

Under the state laws of South Dakota when complaint involving interstate traffic is filed with state commission, it becomes its duty to prosecute the case before the I. C. C., at the expense of the state. *Farmer's Elevator Co. v. C., M. & St. P. Ry. Co.* 475 (476).

**STEAMSHIP LINES.**

Number of principal steamship lines with sailings from various parts of the port of New York. Appendix B. *New York Harbor Case*, 643 (741).

**STIPULATION.**

Evidence submitted in *Lighterage and Storage Regulations at New York*, 35 I. C., 47, considered as part of record herein. *New York Harbor Case*, 643 (673).

**STOCK PILE.**

Complainant purchased coal from mining company to be delivered at a siding at the company's mine at Figart, Pa. Defendant refused to furnish cars unless they were counted against the allotment of cars to the mining company under their car distribution rules, *Held*, Refusal to furnish cars under the circumstances was not unreasonable or unlawful. *Greenfield & Co. v. P. R. R. Co.* 403 (408).

**STOPPAGE IN TRANSIT. See also TRANSIT ARRANGEMENTS.**

Proposed charge of \$2 per car for stopping car prior to arrival at billed destination to be held for orders, justified. *Reconsignment Case*, 590 (626).

**STORAGE.**

Statement showing number of domestic carload shipments of flour and other warehouse freight on hand in warehouses and in cars at rail termini, with period of time for which they had been on hand on the dates shown. *New York Harbor Storage*, 141 (149).

**STORAGE—Continued.**

Contended that export freight held at the New Jersey terminals awaiting delivery to vessels are still in the course of transportation; that delivery is not completed until shipment reaches vessels; that imposition of storage charges on such shipments is unlawful. *Held*, If a railroad company is forced to hold shipments, as a result of commercial conditions, it can not be denied reasonable compensation for storage thus furnished. *Id.* (153-159).

The right of a carrier to impose storage charges after the expiration of a reasonable period of free time, has been frequently recognized. *Id.* (154).

Reduction from five days to two days in the free time allowed for holding at the port of New York domestic freight consigned to "New York lighterage," and increased storage charges on both domestic and export shipments, justified. *Id.* (159).

The Commission has sanctioned increased demurrage and storage charges and permitted reductions in free time in order to keep freight cars on the move. *Export Freight Free Time*, 162 (177).

Any rule or practice that continues storage charges on export traffic after the tender to the rail carrier by the shipper of an order to move his shipments to ship side, or after receipt by the rail carrier of the vessel's permit to load, is unreasonable. *Id.* (177).

Storage charges represent in part compensation to the carriers for the use of their equipment beyond such reasonable time as may be necessary to remove the traffic and in part a penalty for the failure of the shipper to act promptly in that direction. *Id.* (179).

Business of carriers is transportation and not storage. *Id.* (179, 196).

**SUBSEQUENTLY-ESTABLISHED RATE.** *See* **REDUCTION IN RATES (BY CARRIERS).**

**SUPPLEMENTAL REPORT.** *See also* **REHEARING.**

Upon petition divisions prescribed for joint rates on cement, from Cape Girardeau, Mo., to points in southern Illinois, found reasonable in 35 I. C. C., 109. *Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co.* 204 (208).

**SWITCHING.** *See also* **SPOTTING CARS.**

Switching charges at Meridian, Miss., on lumber from Suqualena, Miss., to Meridian, for milling and reshipment, found to have been unlawfully collected. Reparation awarded. *Gray Lumber Co. v. M. & O. R. R. Co.* 20.

Absorption of intermediate switching charges at Milwaukee, Wis., on bituminous coal destined beyond, found to have been without tariff authority. *Milwaukee Switching Absorption*, 41.

Provision in tariff of Santa Fe that switching charges on competitive traffic will be absorbed, not found applicable on shipment of wheat from Sterling, Kans., milled at Arkansas City, Ark., and reshipped to Hartford City, Ind., where the switching service was performed at transit point by the Frisco. *New Era Milling Co. v. A., T. & S. F. Ry. Co.* 67.

Combination rate on scrap iron, from a hold track at Eldson, Ill., within the Chicago switching district to a private sidetrack at East Chicago, Ind., which exceeded rate from a private or industrial track within Chicago switching district, not shown unreasonable. *Price Iron & Steel Co. v. G. T. W. Ry. Co.* 215 (216).

The effect of a switching absorption is to establish a joint rate, but this does not imply that by tariff provision a switching line may arbitrarily demand for its portion of the service any amount satisfactory to it. *Switching Absorptions*, 583 (586).

**SWITCHING—Continued.**

In a proceeding to determine the propriety of switching charges absorbed by carriers, the Commission must consider them as though they were to be charged for by the railroad rendering the service, and paid for by the shipper. *Id.* (587).

In determining the amount of switching charges it is proper to consider the value of the service rendered and the facilities used, and the circumstance that the terminal carrier has been deprived of the line haul. *Id.* (587).

Commission has no authority to require the publication of a joint tariff providing for application of the line haul rate on all traffic to and from all Minneapolis industries. *Id.* (588).

Switching charge of 1 cent per 100 pounds, minimum \$6 per car, assessed and proposed at Minneapolis, Minn., against connecting line carriers where they provide for absorption of switching charges, and assessed and proposed by the C., M. & St. P. Ry. whether payable by shippers or absorbed by connecting lines, found not justified. *Id.* (588).

Proposed increase in intermediate switching charge of the Railway Transfer Co. of Minneapolis and increased switching charges of the M. & St. L. R. R. for intermediate switching performed for connecting carriers at Minneapolis, found not justified. *Id.* (588).

Proposed tariff changes limiting the amount of switching charges absorbed by the M., St. P. & S. S. M. Ry. Co., found justified. *Id.* (588).

Refusal of carriers to absorb switching charges on inbound grain at Minneapolis not shown to be unreasonable. *Id.* (588).

Cost of lighterage service on traffic to Manhattan compared with cost of switching performed to and from industries and piers on the Jersey side. *New York Harbor Case*, 643 (676-680).

Reciprocal: Request for the establishment of reciprocal switching arrangements at the port of New York on the Jersey side, *Held*, to require such a service would accomplish what is expressly prohibited by the act. *New York Harbor Case*, 643 (721-726).

**SYSTEM.** See "SINGLE LINE."

**TANK CARS.**

Rates on blackstrap molasses in tank cars from Key West to Memphis, Tenn., found unduly prejudicial as compared with rates to St. Louis, Mo., and Cairo, Ill. *Memphis Merchants Exchange v. F. E. C. Ry. Co.* 251 (253).

Ninety per cent of oil movement including that from Kansas to Oklahoma, is in tank cars, owned by shippers or private car lines, for which carriers pay car-mile rental, loaded and empty. *National Petroleum Asso. v. M., K. & T. Ry. Co.* 355.

**TARIFFS.**

Absorption of intermediate switching charges at Milwaukee, Wis., on bituminous coal destined beyond, found to have been without tariff authority. *Milwaukee Switching Absorption*, 41.

Provision in tariff of Santa Fe that switching charges on competitive traffic will be absorbed, not found applicable on shipment of wheat from Sterling, Kans., milled at Arkansas City, Ark., and reshipped to Hartford City, Ind., where the switching service was performed at transit point by the Frisco. *New Era Milling Co. v. A., T. & S. F. Ry. Co.* 67.

Failure of defendants tariff to provide a rule to the effect that when a larger car is furnished in lieu of a smaller car ordered, charges shall be assessed on the marked capacity of car ordered, found unreasonable. *Reparation awarded.* *Cutler-Magner Co. v. M., St. P. & S. S. M. Ry. Co.* 249 (250).

The absence from defendant's tariffs of a "two for one" rule in connection with shipments of cattle from Clay Center, Kans., to Kansas City, Mo., found to be unreasonable. *Reparation awarded.* *White v. U. P. R. R. Co.* 261 (262).



**TARIFFS—Continued.**

It can not be fairly imputed to the defendants that they have violated the provisions of their tariffs merely because the transit arrangements are actually used by but one shipper from each transit point. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380 (396).

Commission has no authority to require the publication of a joint tariff providing for application of the line-haul rate on all traffic to and from all Minneapolis industries. *Switching Absorptions*, 583 (588).

**TERMINALS.**

Respondents can not be compelled to give the use of their terminal facilities to competing lines, but they may be required to perform, upon just and reasonable terms, switching service between connecting lines and industries located on their own rails. *Switching Absorptions*, 583 (586).

Description of service performed by, and facilities of, auxiliary terminal companies on traffic to and from New York and Brooklyn. *New York Harbor Case*, 643 (693).

Conclusion that it is unfair to cities of New Jersey to include in their rates the same terminal charges as are used in constructing rates to New York not supported by evidence. *Id.* (708).

There can be no justification for a policy that permits certain terminals to be congested with a surplus of freight while at the same time a near-by terminal has not enough traffic to keep it busy. *Id.* (733).

Authority to regulate rates was not delegated to the Commission for the purpose of making a finding that would induce carriers to unite their efforts toward bettering terminal conditions. *Id.* (733).

The solution of the terminal problem at the port of New York is to be found, not in a change in the rate adjustment, but in the united efforts of the people of the district and the carriers toward the improvement of conditions in which their interests are mutual. *Id.* (734).

Failure to accord adequate recognitions in the rate structure to the heavy and ever-increasing expense of terminal operation does not necessarily lead to conclusion that the carriers rates are unduly prejudicial or otherwise unlawful. *Id.* (735).

**THROUGH AND LOCAL.**

Joint second-class rate on l. c. l. shipments of harness leather from Sheboygan Falls, Wis., to St. Louis, Mo., found unreasonable to the extent that it exceeded the aggregate of intermediate rates contemporaneously in effect to and from Milwaukee, Wis. Reparation awarded. *Weisse & Co. v. C. & N. W. Ry. Co.* 16.

Joint through rate on nut coal from Krebs, Okla., to Brown Spur, Kans., found unreasonable to the extent that it exceeded the aggregate of intermediates to and from Coffeyville, Kans. Fourth section application seeking authority to continue such through rate, denied. Reparation awarded. *Farmers' Elevator & Mercantile Co. v. M. P. Ry. Co.* 25.

Rates on lumber from Chester, Va., to points on and east of the Buffalo-Pittsburgh line in New York, Pennsylvania, New Jersey and Connecticut, found unreasonable to the extent they exceed the aggregate of the local rates from Chester to Richmond and the proportionals beyond, observing the Virginia cities rates as minima. Reparation awarded. *Conquest & Son v. S. A. L. Ry.* 517 (519, 523).

Authority to continue through rates on horses and mules from points in Kentucky, Tennessee, Missouri, Indiana and Illinois, to Birmingham and Montgomery, Ala., which exceed the aggregate of the intermediate rates, denied. *Alabama Packing Co. v. L. & N. R. R. Co.* 524 (531).

**THROUGH AND LOCAL—Continued.**

It has been the rule of the Commission for more than 10 years to regard rates which are higher than the aggregate of intermediate rates as *prima facie* unreasonable. *Id.* (529).

When the assessment of a reconsigning charge results in greater aggregate compensation to the carrier than the sum of intermediate rates, it can not be considered that section four has been violated for the services performed are not the same in the two instances. *Reconsignment Case*, 590 (633).

**THROUGH RATES.**

Defendants will be expected to establish through rates on wheat from points on defendant's line in Montana, to points on defendant's line in eastern North Dakota and more westerly destinations in North Dakota in conformity with views herein expressed. *Royal Milling Co. v. G. N. Ry. Co.* 263 (271).

**THROUGH ROUTES AND JOINT RATES.**

Through routes and joint rates required to be established on coke, from points on Interstate Railroad to points in Alabama, Florida and other States, not in excess of junction point rates applicable from Appalachia, Blackwood, Josephine and Norton, Va. *Stonega Coke & Coal Co. v. L. & N. R. R. Co.* 282 (284).

Establishment of through routes and joint rates from eastern points and ports and south Atlantic ports to Tuscaloosa, Ala., not warranted. *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.* 483 (484).

Rule of the G. N. Ry. to the effect that it will not permit its cars loaded with grain at South Dakota points to move through to Omaha, under the through routes and joint rates in effect, found unreasonable. *Omaha Grain Exchange v. G. N. Ry. Co.* 532 (539).

No rule or practice of carriers may lawfully operate to make nugatory the obligation that rests upon carriers to move traffic promptly over the through routes and joint rates in effect. *Id.* (538).

In absence of a prayer for, the Commission can not establish. *New York Harbor Case*, 643 (724).

**THROUGH TRAFFIC.**

Requirement by G. N. Ry. that grain from South Dakota points to Omaha, shall be held indefinitely at Sioux City to await the ability of G. N. Ry. to secure suitable foreign cars, is an unreasonable interference with the through movement of freight. *Omaha Grain Exchange v. G. N. Ry. Co.* 532 (536).

**TOLERANCE.**

Increase in tolerance on anthracite coal of 1 per cent of difference between origin and destination weight and  $\frac{1}{2}$  of 1 per cent on bituminous coal, as an allowance for evaporation and moisture in addition to the regular tolerance allowance of 1 per cent, not justified. *Northwestern Traffic & Service Bureau, Inc., v. C., M. & St. P. Ry. Co.* 549 (556).

Tolerance is the allowable margin of error between the origin and destination scale readings, arising from differences in scales or errors in weighings or from the absorption or evaporation of moisture by the shipment in transit, which must be exceeded as a condition precedent to the correction of the billed weight and the reweighing of the shipment free. *Id.* (549).

**TON-MILE REVENUE. See also CAR-MILE EARNINGS; EARNINGS.**

Apples: Ton-mile earnings on apples from points in Arkansas to Muskogee, Okla., range from 3.36 cents for 149 miles to 6.23 cents for 77 miles. *Muskogee Produce Co. v. St. L. & S. F. R. R. Co.* 239 (241).

Brick: Ton-mile earnings on brick, from Brazil and Brownstown, Ind., to Omaha for respective short line distances of 599 and 655 miles, shown. *Schall Co. v. B. & O. S. W. R. R. Co.* 254 (256).

**TON-MILE REVENUE—Continued.**

Coal: Ton-mile earnings on coal, from Zeigler, Ill., to Omaha, Nebr., a distance of 505 miles, shown. *Id.* (256).

Coal: Ton-mile earnings on, for distances ranging from 409 miles to 734 miles, shown. *Lincoln Commercial Club v. C. & S. Ry. Co.* 557 (559, 560, 562).

Coconut oil: Ton-mile earnings on coconut oil in tank cars for approximate distances of 2,300 and 2,280 miles, shown. *Proctor & Gamble Co. v. C., C., C. & St. L. Ry. Co.* 231 (232).

Coke: Shown from the Connellsville district to points in the \$1.65, \$1.85, and \$1.95 rate groups in Ohio for average distance of from 244.1 to 357.1 miles. *Galion Iron Works & Mfg. Co. v. B. & O. R. R. Co.* 136 (138).

Leather, scrap: Ton-mile revenue for distances ranging from 360 miles to 1,090 miles, shown. *National Utilization Corporation v. B. & A. R. R. Co.* 467 (469).

Lumber: Ton-mile revenue on lumber for distances ranging from 656 to 1,363 miles, shown. *Traffic Bureau Sioux City Commercial Club v. A. & W. Ry. Co.* 347 (349-353).

Molasses, blackstrap: Ton-mile earnings on, from Key West to Memphis, Tenn., and Cairo, Ill., for respective distances of 1,200 and 1,284 miles, shown. *Memphis Merchants' Exchange v. F. E. C. Ry. Co.* 251 (253).

Peanuts: Earnings on, from Houston, Tex., and Norfolk, Va., to St. Louis, Mo., Chicago, Ill., and other points for distances ranging from 555 miles to 1,494 miles, shown. *Fidelity Cotton Oil Co. v. A. & V. Ry. Co.* 542 (544).

**TONNAGE. See also VOLUME OF TRAFFIC.**

Complainant's freight comprises about 30 per cent of the Lowville & Beaver River Railroad's total tonnage. *Lewis Co. v. L. & B. R. R. Co.* 79.

Separate tonnage of the New York Central, and Erie Railroads, and the Erie and Champlain Canals. Appendix B. *New York Harbor Case*, 643 (743).

Statement showing tonnage of eastbound and westbound freight handled at the New York City stations of the N. Y. C. and W. S. Railroads during 1916. Appendix G. *Id.* (746).

**TRAIN SPEED.**

Time consumed by shipments from inland points to New York, shown. *Export Freight Free Time*, 162 (171).

**TRANSCONTINENTAL RATES.**

Commodity rate on packing-house products in mixed carloads from Transcontinental Group F points to California terminals, not found unreasonable. Complaint dismissed. *Swift & Co. v. U. P. R. R. Co.* 49 (52).

**TRANSFER.**

There is no substantial difference between export and coastwise traffic with respect to transfer from cars to ship. *Export Freight Free Time*, 162 (180).

Contention by defendants that the requirement of the G. N. Ry., to the effect that grain shall be transferred from its cars at the end of its line into foreign cars is not the same as a refusal to accept shipment, may be conceded. *Omaha Grain Exchange v. G. N. Ry. Co.* 532 (536).

Charges proposed for transferring the contents of certain reconsigned cars not justified. *Reconsignment Case*, 590 (635).

**TRANSIT ARRANGEMENTS. See also STOPPAGE IN TRANSIT.**

In general:

The Commission has considered the importance of granting transit upon grain at all points on a through route at which transit may be used, so as to prevent undue preference and advantage to terminal and rate-breaking points. *Royal Milling Co. v. G. N. Ry. Co.* 263 (265).

**TRANSIT ARRANGEMENTS—Continued.**

Transit rules and regulations respecting shipments of hogs at points in Wisconsin, Illinois, Iowa, and Minnesota, not found unduly prejudicial to complainants and the public live stock markets at Chicago, Denver, and other points. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380.

Requirement that the identity of shipments of live stock must be preserved at open markets, and not at country transit points, is just and reasonable under the circumstances. *Id.* (382, 397, 398).

Defendants furnish at their expense yards, scales, etc., for hogs at transit points while at open markets shipper must pay for yardage, weighing, etc. *Id.* (387).

Fact that hogs to open markets must be loaded to minimum weight at origin or charges paid based thereon, while no such requirement is made on shipments to transit points, constitutes no undue prejudice against open markets. *Id.* (387, 399).

Brief history of the origin and growth of the transit or concentration arrangements, given. *Id.* (388).

The first transit arrangement on hogs, under tariff authority was established at Boone, Iowa, in February, 1890. *Id.* (389).

It can not be fairly imputed to the defendants that they have violated the provisions of their tariffs merely because the transit arrangements are actually used by but one shipper from each transit point. *Id.* (396).

Transit arrangements, such as are here involved become unlawful only in case they unduly prejudice some shipper, locality or class of traffic. *Id.* (397).

Concentration and compression service: Canceled and subsequently restored at Lawton, Okla., on cotton from Davidson and Snyder, Okla., to Texas City, Tex., and New Orleans, La., for export, found unreasonable. Reparation awarded. *Campbell & Cleaver v. St. L. & S. F. R. R. Co.* 8.

**Milling:**

Provision in tariff of Santa Fe that switching charges on competitive traffic will be absorbed, not found applicable on shipment of wheat from Sterling, Kans., milled at Arkansas City, Ark., and reshipped to Hartford City, Ind., where the switching service was performed at transit point by the Frisco. *New Era Milling Co. v. A., T. & S. F. Ry. Co.* 67.

Proposed cancellation of waiver of back-haul or out of route charges on grain milled in transit at certain stations in Michigan and consigned to Bryan and Toledo, Ohio, and points south and east, found justified. *Grain Transit at Michigan Stations*, 104 (108).

Maintenance of milling-in-transit charge of 2 cents per 100 pounds at Great Falls, Mont., on wheat from and to points on defendant's line, while no charge is made on wheat milled at Minneapolis and other eastern terminals, found to result in undue prejudice to complainants for which defendant alone can not be held responsible. *Royal Milling Co. v. G. N. Ry. Co.* 268 (265, 271).

**TRANSPORTATION. See also DELIVERY.**

Business of carriers is transportation and not storage. *Export Freight Free Time*, 162 (179, 196).

There is no institution in which regularity of operation is more requisite than in transportation. *Unification of Railroad Operation*, 757 (763).

**TRANSPORTATION CONDITIONS.**

Transportation conditions from Sheboygan Falls, Wis., and Sheboygan, Wis., a lake port, with lake service, not shown to be the same. *Weisse & Co. v. C. & N. W. Ry. Co.* 16.

**TRUNK LINE TERRITORY.**

Described. Michigan Percentage Cases, 409 (410).

**"TRYING-THE-MARKET" PRIVILEGES.**

There is a heavy movement of live stock from the Missouri River markets to St. Louis, East St. Louis, Chicago, and other eastern points on account of the "trying-the-market" privileges available at the Missouri River markets on stock originating west thereof. Dimmitt-Caudle-Smith Live Stock Coma. Co. v. C., B. & Q. R. R. Co. 287 (315).

**TWO FOR ONE.**

Failure of defendant's tariff to provide a "two for one" rule in connection with shipments of cattle from Clay Center, Kans., to Kansas City, Mo., found unreasonable. Reparation awarded. White v. U. P. R. R. Co. 261 (262).

**TWO-LINE HAUL.**

While the Commission has approved in some cases rate increases because of two or more carriers participating in the haul, this fact has not, however, been laid down as a principle generally applicable to two-line hauls. Coal to South Dakota, 750 (755).

**UNDERCHARGES.**

May be waived. Kath Co., Inc. v. A., T. & N. Ry. 42 (44).

**UNIFICATION.**

It has become increasingly clear, since the outbreak of the European War, that unification in the operation of the railroads during the period of conflict is indispensable to their fullest utilization for the national defense and welfare. Unification of Railroad Operation, 757.

Plans suggested by the Commission to Congress for unification of operation of the railroads. Id. (758).

If unification of the railroads is to be effected by the carriers it should be effected in a lawful way, with financial assistance from the Government treasury. Id. (760).

**VAIN ACT.**

Prior to decision in *Industrial Railways Case*, 29 I. C. C., 212, complainant performed its own spotting service and received an allowance therefor. Following *Car Spotting Charges*, 34 I. C. C., 609, the allowance was restored. Held, It was not complainant's duty to make formal demand upon defendants to perform this service as the law does not require the performance of vain acts. Stewart Iron Co. v. P. Co. 512 (516).

**VALUE OF COMMODITY.**

Box shook material: During 1914 and 1915 the factory price of shop lumber used in manufacture of box shook and box material ranged from \$11 to \$12.75 per 1,000 feet, while the mill price of higher grade lumber was about \$32 per 1,000 feet. California Pine Box & Lumber Co. v. S. P. Co. 372 (376).

Leather, scrap waste: Worth \$7 or \$8 per ton. National Utilization Corporation v. B. & A. R. R. Co. 467 (468).

Limestone and marble: Value of rough, sawed, and cut limestone and rough marble, shown. Official Classification No. 44, 91 (96, 97).

Peanuts, shelled: Value per pound of shelled peanuts, flour, rice, and wheat, shown. Fidelity Cotton Oil Co. v. A. & V. Ry. Co. 542 (547).

Wood-pulp board: Value varies from \$35 to \$75 per ton. Lewis Co. v. L. & B. R. R. Co. 79 (80).

**VOLUME OF TRAFFIC. See also TONNAGE.**

In 1915, 25,000 cars of limestone of approximately 60,000 pounds each were shipped from the Bedford-Bloomington district in Indiana, which furnished for that year 72.6 per cent of all the structural limestone used in the United States. Official Classification No. 44, 91 (96).

**VOLUME OF TRAFFIC—Continued.**

Volume of export traffic received at New Orleans and Mobile during certain periods, shown. Export Freight Free Time, 162 (185).

Receipts of all live stock at Cincinnati, Cleveland, Indianapolis, East St. Louis, Kansas City, and St. Joseph, for the year 1915, shown. Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C., B. & Q. R. R. Co. 287 (311).

Lines traversing the southern part of the lower peninsula of Michigan are to be ranked among the leading trunk lines of the east, although the total through tonnage traversing the states of Ohio and Indiana greatly exceed that carried through Michigan. Michigan Percentage Cases, 409 (449).

**VOLUNTARY REDUCTION. See REDUCTION IN RATES (BY CARRIERS).****WAR.**

Special report to Congress with reference to transportation conditions as affecting and affected by the war. Unification of Railroad Operation, 757.

Act to regulate commerce was framed for times of peace and for protection of shippers and public against unjust or unfair treatment by the carrier, and not to protection of the nation and its commerce in time of war. Id. (757).

Demand for transportation occasioned by the war placed a strain upon the facilities and equipment of the railroads which they were not prepared to meet. Id. (758).

**WAREHOUSES. See also DELIVERY.**

Shipper has no legal right, nor is it the duty of a carrier to furnish a car for use as a warehouse. Export Freight Free Time, 162 (179, 196).

**WATER COMPETITION. See COMPETITION (WATER).****WATER FRONTS. See RIPARIAN RIGHTS.****WATER TRANSPORTATION.**

Whenever and wherever, within the powers granted by the statute under which the Commission operates, there is presented an opportunity to utilize water transportation, this Commission will freely exercise its authority. Charleston & Norfolk S. S. Co. 365 (371).

**WEAK LINES.**

In determining what are reasonable rates between two points neither that road which can afford to handle traffic at the lowest rate nor that whose necessities might justify the highest rate should be exclusively considered, but rates must be established with reference to the whole situation. Barnett Mfg. Co. v. A., T. & S. F. Ry. Co. 27 (30).

**WEIGHT. See also MINIMUM WEIGHT.**

Contention that double carload rate assessed on that part of a shipment of lumber from Carryville, Ark., to Cairo, Ill., in excess of 110 per cent of market capacity of car was unreasonable to the extent it exceeded carload rate or charges accruing had shipment moved in two cars, not sustained. McFarland Lumber Co. v. St. L. S. W. Ry. Co. 225 (226).

Contention by complainant that charges on two carloads of timbers from Prentiss, Miss., to Waterbury, Conn., weighed at Hattiesburg, Miss., should have been based on weight at destination, not sustained. Trexler Lumber Co. v. N. Y., N. H. & H. R. R. Co. 229 (230).

Increase in tolerance on anthracite coal of 1 per cent of difference between origin and destination weight and  $\frac{1}{2}$  of 1 per cent on bituminous coal, as an allowance for evaporation and moisture in addition to the regular tolerance allowance of 1 per cent, not justified. Northwestern Traffic & Service Bureau, Inc. v. C., M. & St. P. Ry. Co. 549 (556).

**WHARVES.**

Description of wharf system at New Orleans and other Gulf ports. Export Freight Free Time, 162 (182).



**WHATSOEVER.** *See* "IN ANY RESPECT WHATSOEVER."

**YARDAGE CHARGES.**

Defendants furnish at their expense yards, scales, etc., for hogs at transit points, while at open markets shipper must pay for yardage, weighing, etc. *National Live Stock Exchange v. C., B. & Q. R. R. Co.* 380 (387).

**ZONES.**

The chief justification for a rate zone is that it places all producers on the same footing in a given market. *New York Harbor Case*, 643 (712).



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